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Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1998

WILLIAM D. STONEBURNER, Lieutenant Colonel,

Petitioner,

vs.

SECRETARY OF THE ARMY AND THE ARMY BOARD FOR CORRECTIONS OF MILITARY RECORDS,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does Army Regulation (AR) 623-105, permit a rating official's evaluation qualification starting date to relate back previous in time to the date he was first designated as a rating official in the rated officer's rating chain.

2. Does the Fifth Circuit ruling here conflict with this Court's decision in *Motor Vehicles Mfrs. Ass'n v. State Farm Mut.*, 463 U.S. 29, 43 (1983) as it pertains to review under the 'arbitrary and capricious' standard causing that lower court to so far depart from the accepted and usual course of judicial proceedings, and sanctioned such departure by a lower court, as to call for an exercise of this Court's power of supervision.

3. Does Army Regulation (AR) 623-105 violate due process in that it violates equal protection as guaranteed by the Fifth Amendment to the Constitution.

PARTIES TO THE PROCEEDING

Only those parties named in the caption were parties before the court of appeals.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, WILLIAM D. STONEBURNER, respectfully requests a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case [all references to A-12, B-9, F-6, or J-2, etc. refer to that page in Appendix A, B, F, or J, etc. where the material may be found].

OPINIONS BELOW

The opinion of that United States Court of Appeals ("Court of Appeals") in *Stoneburner v. Secretary of the Army* is found at 152 F.3d 485 (5th cir. 1998) and at Appendix A herein. The district court's unpublished opinion, *Stoneburner v. Secretary of the Army*, (Case No. W96 CA 489, W.D. Tex, 1997) is provided at Appendix B.

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals was entered on September 8, 1998. The Court of Appeals denied a timely petition for rehearing on November 6, 1998 (C-1). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND REGULATORY PROVISIONS INVOLVED

The Constitutional and regulatory provisions involved in this case are found at Appendix E.

STATEMENT OF THE CASE

In December 1996 Appellant ("Stoneburner"), filed suit[1], in the District Court for the Western District of Texas against the Secretary of the Army and the Army Board for Correction of Military Records ("ABCMR") based on 10 U.S.C. § 1552(a) and 5 U.S.C. § 702 et seq. to review the ABCMR's

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[1] It was filed on December 19, 1996. *See* Q-4 and Q-5.

final action in this case. It has jurisdiction of the claim pursuant to 28 U.S.C. § 1331. This suit involves a contested Officer Evaluation Report ("OER").

A. BACKGROUND OF THE 1996 SUIT.

In 1986 through May 28, 1987, Stoneburner was working in the Directorate of Reserve Component Support ("DRCS"), III Corps, Fort Hood, Texas. He was a Lieutenant Colonel ("LTC") on active duty in the Army. In March 1987 Colonel Richardson ("Richardson") succeeded Colonel Woodward ("Woodward") as Director.

Stoneburner received an OER for the period June 1, 1986 to May 31, 1987 which he considered erroneous, improper, unjust and illegal due to the *senior rater potential evaluation* by Richardson. Stoneburner appealed to the *Officer Special Review Board* ("OSRB") to remove the OER from his official records. OSRB denied his two administrative appeals.

Then, he filed an application with the ABCMR to correct his military records since it was a referred report, the Senior Rater ("SR") never qualified to evaluate him, and AR 623-105 denies equal protection. The ABCMR denied his application finding no merit in his first two contentions.

B. THE CONTESTED OER.

The contested OER is found at Appendix G. Appellant's rater was LTC English ("English"). He gave Stoneburner "1's" in the Professionalism section. He marked the block 'always exceeded requirements' in the performance section. He said Stoneburner's planning efforts were the driving force behind the successes enjoyed by the Reserve Components (RC), that annual training was established for 273 RC units as a result of his coordination efforts, that his performance was exemplary, and that his contributions were that of a professional Army officer (*See* G-4 to G-6).

English's *potential evaluation* recommended his promotion with contemporaries.[2] His narrative in the block labeled "*Comment on Potential*" stated "LTC Stoneburner should be continued in the U.S. Army Reserve as an Individual Ready Reservist when he reaches his mandatory release from active duty in June 1990" (*See* G-6).

Richardson, the Senior Rater ("SR"), also rated Stoneburner's *performance* high. He agreed with English's assessment of performance without reservation:[3] "Fully concur with the rater's comments". As well, he made his own comment about Appellant's *performance*: "During my observation of LTC Stoneburner's *performance* he has demonstrated a very capable ability to plan, schedule, and coordinate Reserve Component training." (*See* G-7).

Richardson marked the fifth block from the top in his evaluation of *potential for promotion* and his last narrative entry in Part VIIb. said, in part, Stoneburner "*consistently meets the standards of Lieutenant Colonel on active duty and should continue to serve at that level* on a higher headquarters staff . . . " (emphasis added) (*See* G-7).

C. COMMANDER'S INQUIRY

Appellant requested a Commander's Inquiry ("CI") into this OER which found: the OER technically legal, the fairness of the SR *potential evaluation* questionable, and that its ending date was May 28, 1987. It also included a 'COMPUTATION OF RATING PERIOD' exhibit which depicted each

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[2] Accelerated promotions only occur in the reserve where an officer is assigned to a unit vacancy position which should be held by an officer in the next higher grade (i.e., a captain in a major's slot). Stoneburner was in the Active Guard and Reserve Program (AGR). He was not assigned to a reserve unit at that time so an accelerated promotion was not available to him as long as he remained in the AGR program unassigned to a reserve unit.

[3] It can be inferred he agreed with English's promotion recommendation, as well, since he *fully concurred*.

rated and nonrated day Stoneburner was away from the DRCS on leave and TDY from January 31, 1987 to May 28, 1987 (*See* H-8). In the CI Stoneburner said he prepared an OER Support Form before going on 35 days TDY in February 1987. It listed Woodward as senior rater and was given to English at the end of January. English confirmed he had the form a long time but did not recall if it was before the Director change or if it was discussed who would 'senior rate'. (*See* H-3).

D. THE OFFICER SPECIAL REVIEW BOARD APPEALS

Appellant appealed twice to the OSRB. He claimed the OER was illegal since the SR never qualified to 'senior rate' him and that it was a referred report. OSRB denied both appeals.

OSRB interviewed Richardson each time. In his first interview he stated he rated Stoneburner's *performance* on some observations and review of his work. He was aware his part of the OER dealt with potential. He felt it appropriate to put Stoneburner *in the middle* of the SR Potential Evaluation vertical blocks. He knew he put him at the low end of his 'SR profile' but believed his *potential evaluation* was fair, accurate and objective (*See* I-8). OSRB found no clear and convincing evidence was provided to justify deletion or amendment of the OER.

Whether the OER was a referred report was the primary issue in the second OSRB appeal. Stoneburner also contended the rater's promotion recommendation and narrative entry in the '*Comment on Potential*' block (*see* page 3 of this petition) contradict one another and create ambiguity for selection boards. OSRB said they were not contradictory nor ambiguous (*See* J-2 and J-11).

On 16 Jan 90 OSRB contacted the rater. He said Stoneburner's *performance* deteriorated significantly *over the last five to six months of the rating period*. According to him, Stoneburner quit on us, developed a bad attitude, did not want

to come to work, was absent on numerous occasions from his place of duty giving no explanation to the chain of command as to his whereabouts, when he did come to work his appearance was not what was expected of a field grade officer, he failed to follow through on many taskings and any work actually turned in as complete was of poor quality needing to be redone; further, Stoneburner failed to coordinate several taskings regarding logistical support for the most important two-week annual training period – 'Starburst', the 49th Armored Division's AT – causing problems directly attributable to his lack of coordination (*See* J-6 to J-8).

English stated he counseled Stoneburner about the deterioration in his performance on more than one occasion and that, if he didn't get his act together, *he would see it in writing*.

Specifically, English directed Appellant to continue work on the Annual Training (AT) Plan for 1988 until his departure from Fort Hood (AT planning usually began 18 months prior to actual training dates). He said Stoneburner failed to complete this task (*See* J-7).

In his interview, he also stated "he stands firmly behind his rating." As to Stoneburner's *potential to perform in the grade of colonel* he indicated that, due to his deteriorated performance, he felt Appellant "had reached his potential as a LTC and in no way should Stoneburner be promoted to full colonel." He again emphasized "if the OER got his attention[4] and he was doing good in his new job then that is good, but it did not change his impression of Stoneburner's performance nor his rating[5] of him". English said during the CI he was

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[4] Only his '*Comment on Potential*' entry got Appellant's attention.

[5] English's January 1990 interview is bizarre. It begins with derogatory comments that seem to totally repudiate his performance evaluation but then he affirmed his performance and potential evaluations stating 'he stands firmly behind his ratings' and, again, a second time 'it does not change [my] impression of [Stoneburner's] performance nor [my] rating'. Thus, in the same interview, English contradicts, repudiates, and twice reaffirms his evaluations of Stoneburner's performance and potential.

asked if he prepared the SR's comments on the contest OER or provided input to it. He said he provided no input, *verbal* or otherwise, to the SR and was never queried for input by him. English said Woodward tasked him to complete Appellant's Meritorious Service Medal[6] (MSM) award before Woodward left in March 1987. He said his MSM recommendation *was based on Stoneburner's previous performance* (*See* J-8).

LTC Coachys' stated English told him to consider 'this' his permanent work area (English assigned Stoneburner's desk and work area to him on March 9, 1987) because Stoneburner would be taking leave, permissive TDY and TDY for additional schooling for his next assignment and would not be spending much time in the office until his departure from Fort Hood. As to LTC Coachys' statement, he said he could not recall the details, that "possibly LTC Coachys sat at his desk, but there was more than adequate work space in the DRCS for [Stoneburner] to continue his work"[7] (*See* J-8). The statement of LTC Coachys is found at K-1.

OSRB again contacted Richardson on 18 Jan 90. He said much of his impression of appellant's *performance and potential* was based on the previous SR's comments during their two-week overlap when he 'sized-up' Stoneburner. He was also aware, from day-to-day business with the rater during those 88 days, English considered Stoneburner's performance

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[6] *See* P-1 and P-2.

[7] Note his reply to the OSRB investigator never denied he told LTC Coachys Stoneburner would not be spending much time in the DRCS prior to his departure in May 1987. Also, it is curious that English's memory of events that occurred about three years previous is exact, clear and precise except in two instances. He did not recall the details of his conversation with LTC Coachys when he assigned him to Stoneburner's work area and desk as his permanent work place nor did he recall when he received the OER Support Form from Stoneburner or if it was ever discussed who would 'senior rate' on Stoneburner's OER. If both of these events did occur as both Stoneburner and Coachys said they did, they would bolster Appellant's case significantly.

"less than acceptable". He respected English's judgment as he was a solid officer. Richardson said he prepared his own OER comments, Stoneburner *did not impress him,* and *he thought Stoneburner had no potential for promotion to full colonel. He rated him accordingly* (emphasis added) (*See* J-9).

OSRB found no evidence to indicate the ratings by both raters were other than a fair and just appraisal of his performance and potential. Since Appellant provided no new clear and convincing evidence to reverse its denial of his initial appeal.

It also noted a SR is to use all reasonable means to become familiar with the rated officer's performance including, if practical, direct contact, records and reports, other raters evaluation's, and the OER support form, para. 3-12a.[8] (*See* J-10 to J-11).

E. THE ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

OSRB provided an Advisory Opinion to ABCMR in the adjudication of Stoneburner's application to correct his military record (i.e., to delete this OER) (*See* Appendix L for the advisory opinion). The OSRB advisory opinion listed his contentions (only those pertinent in this review are included here): the SR did not qualify to evaluate him based on 60 calendar days of rated time; the OER should have been referred to him for comment as a referred report; the rater's OER input and his comments provided to OSRB were inconsistent; and that he was denied equal protection as guaranteed by the Constitution (*See* L-1 to L-2).

OSRB's opinion said it considered all contentions, evidence, and concluded the appellant did not provide clear and convincing evidence to support them. Specifically, it determined "rating officials did not err in rendering a rating using

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[8] [All references to par 1-4e, para 3-12a, para 4-27, etc. refer to specific numbered paragraphs in AR 623-105 unless otherwise indicated.]

the published rating scheme" (*See* L-2). On the referred report issue it found the OER does not meet the requirements of para. 4-27, or qualify for referral based on appellant's contention the rater implied Stoneburner should be retired as a LTC. Finally, the advisory opinion found the inconsistencies he alleged existed between the rater's comments on the contested OER and his comments to OSRB were also unfounded (*See* L-2 to L-3.) OSRB closed its opinion by stating it found no basis to change its prior decision denying Stoneburner's appeal. It recommended ABCMR deny his application. It made no reference to Richardson's fifth-from-the-top SR potential evaluation entry nor his last narrative comment in Part VII.b. of the OER (*See* L-1 to L-3). Appellant first raised this issue in the second OSRB appeal (*See* S-5 to S-6).

The ABCMR's "*MEMORANDUM OF CONSIDERATION*" is its opinion on the merits of his application (*See* C-1 to C-6). Its opinion says it considered Stoneburner's application plus documents contained in the case file. In the section of its opinion captioned "*EVIDENCE OF RECORD*:" it listed, described, and incorporated by reference several military records that are part of his ABCMR application. They were described in separate paragraphs briefly. They included a paragraph[9] summarizing the criteria for a *referred* report (*See* C-4). The ABCMR decision memorandum mentioned the contents of the OSRB Case Summary and Advisory Opinion in two paragraphs.[10] The "*DISCUSSION*:"

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[9] [In accordance with] paragraph 4-27 an OER is classified as a referred report when it contains *ratings or comments* that are *so derogatory that the report may have an adverse impact on the rated officer*[sic]*s career*. (emphasis added). Reports which contain ratings of 4 or 5 in Part IV, a 3 or 4 block rating in Part Vb, *a do not promote in Part Vd.* or any senior rater's potential evaluation in one of the three bottom blocks in Part VIIa. (emphasis added) (*See* C-4).

[10] Further details of the applicant's military career, the contested OER (COPY ATTACHED), OER record, unsuccessful OER appeal and the rationale for denying his request are set forth in the case summary provided

section[11] consisted of one sentence which preceded the ABCMR's conclusions.[12]

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by the Officer Special Review Board (OSRB) in the Office of the Deputy Chief of Staff for Personnel (COPY ATTACHED).

The facts relating to the applicant's contention that the contested OER should be removed from the records are contained in an opinion (COPY ATTACHED) from the OSRB, which is incorporated herein and need not be reiterated. The OSRB opined that the applicant had failed to submit clear and convincing evidence that would warrant alteration or deletion of the contested OER. (See C-4).

[11] *DISCUSSION:* Considering all the evidence, allegations, and information presented by the applicant, together with the evidence of record, applicable law and regulations, and advisory opinion(s), it is concluded. (See C-4).

[12] 1. The applicant's contention that the contested OER reporting period should have ended somewhere between 29 January 1987, when he alleges that his replacement arrived, and 8 March 1987, when he was farewelled with his previous senior rater, is not supported by the records which indicate his last duty day was 28 May 1987.

2. Under the provisions of paragraph 4-27, Army Regulation 623-105 the OER does not meet the criteria to be classified as a referred report; therefore, the applicant's contention that the contested OER should have been referred is without merit.

3. The senior rater met the minimum time in the position as necessary to provide an evaluation of the applicant; therefore, his portion of the contested OER is valid.

4. Since the officer evaluation system is basically an administrative as opposed to legal system, and since the correct administrative procedures were adhered to in processing the contested report, the applicant's contention that he was not given due process is not supported by the records. Likewise, he has provided no rationale to support his request to refer the application to the Office of The Judge Advocate General for a legal interpretation of the regulation relating to the eligibility of the senior rater as promulgated by Army Regulation 623-105.

5. Since there is no basis to grant the portion of his request pertaining to the contested evaluation report, there is likewise no basis to grant the remaining requests. (C-5 to C-6).

DETERMINATION: The applicant has failed to submit sufficient relevant evidence to demonstrate the existence of probable error or injustice. [His application was thereupon denied by all three members of the board.]" (*See* C-6). It's opinion is silent as to the SR's *potential rating* in Part VIIa and VIIb (*See* C-1 to C-6).

F. THE PROCEEDING BELOW.

After this suit was filed in District Court, the Secretary of the Army filed a motion for summary judgment; Appellant then filed a cross-motion for summary judgment. The District Court granted Secretary of the Army Summary Judgment and denied Appellant's cross-motion. Appellant filed a timely motion for reconsideration; the District Court denied it.

Appellant timely appealed to the United States Court of Appeals. The Court of Appeals affirmed the lower court's grant of summary judgment. Appellant timely filed a petition for rehearing that included copies of the DRCS's OER RATING SCHEME for March and April 1987. They indicated Richardson was not designated as Stoneburner's SR until April 1, 1987. Thus, he only had 58 calendar days in the rating chain according to the published OER RATING SCHEME since Stoneburner's last day at Fort Hood was May 28, 1987 (*See* Appendix M-1 and -2).

The Court of Appeals denied the petition for rehearing without explanation. (*See* D-1). It seems the Court of Appeals based its decision to do so on a March 2, 1987 start date for the 60 day minimum-time-in-position calculation to enable Richardson to qualify to evaluate Stoneburner.

REASONS FOR GRANTING THE WRIT

I

THE PETITION SHOULD BE GRANTED BECAUSE THE COURT OF APPEALS MISINTERPRETED AR 623-105. AR 623-105 DOES NOT PERMIT A RATING OFFICIAL'S EVALUATION QUALIFICATION STARTING DATE TO RELATE BACK PREVIOUS IN TIME TO THE DATE HE WAS FIRST DESIGNATED AS A RATING OFFICIAL IN THE RATED OFFICER'S RATING CHAIN

Rating chains must be drawn up by name identifying the rating officials who evaluate each rated officer. It must be published in writing, have an effective date, and be distributed to all rated officers and each rating official in the chain. Changes must be published and distributed in the same manner. No change may be retroactive, para. 1-4.e.(1) (*See* F-1).

The rated officer is the evaluation's subject, para. 3-2.a. (*See* F-6). When a chain is established the first officials designated are the rater and SR, para. 3-1.b. (*See* F-6).

When the rated period starts, the rater identifies the officer's entire rating chain and informs him if changes occur later, para. 4-7.b. (*See* F-12).

A SR usually provides final review of evaluations rendered by other rating officials as well as rating the officer himself. One of his review functions is to ensure all rating chains are correct and each rating official qualified to evaluate and has otherwise complied with, para. 1-4.e.(1) and para. 3-14.a (*See* F-1 and F-9). Normally, a SR must be in the rating chain (designated by name as the rated officer's SR in the published rating scheme) for at least 90 days, para 3-10.b.(1) (*See* F-7).

Where he was the same officer's intermediate rater in a previously published rating chain, and the combined time served in the rating chain in both capacities equals 60 or more days, then he may render a 'senior rating' in such circumstances.

In the facts before this Court, as stated at page 10 of this petition, based on the published OER rating scheme, Richardson never qualified to evaluate Stoneburner. The published rating scheme never designated Richardson as Stoneburner's SR until April 1, 1987. He *never qualified to 'senior rate'* him.

The only way he could qualify is if the order designating him as SR related back to the day he assumed supervision of the DRCS in March 1987. But AR 623-105 states no change to a rating scheme may be retroactive, para 1-4e(1) (*See* at F-1). The Court below and ABCMR erred by finding he was in the chain for at least 60 days. The petition should be granted for this reason.

II

THE PETITION SHOULD BE GRANTED BECAUSE THE OPINION BELOW CONFLICTS WITH THIS COURT'S PRIOR RULINGS ON WHAT REVIEW OF AGENCY ACTION MUST CONSIST OF UNDER THE 'ARBITRARY AND CAPRICIOUS' STANDARD.

This Court has stated agency action becomes arbitrary and capricious when an agency:

a. Has relied on factors which Congress has not intended.

b. Entirely failed to consider an important aspect of the problem.

c. Offered an explanation for its decision running counter to the evidence before the agency.

d. Its decision is so implausible that there cannot be any rational connection between the facts found and the decision it made. *Motor Vehicle Mfrs Ass'n v. State Farm Mut.*, 463 U.S. 29, 43 (1983).

Here the ABCMR violated all of them. The Court's below do not fully understand the facts or appellant's reliance on *Muse v. United States*, 21 Cl. Ct. 592 (1990).

a. Appellant's Reliance on *Muse v. United States*, 21 Cl. Ct. 592 (1990)

Muse is cited because the ABCMR's errors in Muse were repeated here. *Muse* involved inconsistent, contradicting performance examples; the issue here is a mediocre or marginal evaluation of potential that does not support, is inconsistent with, and contradicts both raters' very favorable evaluation of Appellant's performance.

Appellant's raters gave his performance the highest possible evaluation they could give but his SR gave him a mediocre or marginal evaluation of potential. In *Muse* promotion was strongly recommended and CPT Muse's raters rated his performance 'Superior'.

The *Muse* court did find derogatory examples of performance made that OER 'adverse in fact'. *But it was not made adverse because the performance examples were derogatory.* The key point in *Muse* is that these specific examples of performance *failed to support, were inconsistent with, and contradicted each rater's prior determination that his overall performance merited the characterization of 'superior'.* It was the fact that the rest of the OER was contradicted by these inconsistent examples which did not support the 'superior' description of his overall performance that made it a referred report.

Here, the SR's mediocre or marginal evaluation of Appellant's potential for promotion does not support, is inconsistent with, and contradicts the rest of the OER. The SR agreed completely with the raters assessment of performance when he 'fully concurred' with English's performance evaluation and he added his own favorable comment on performance in his second sentence in Part VIIb. *AR 623-105 requires a potential evaluation to be based on the same official's evaluation of performance.*[13]

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[13] This OER contains no derogatory statement *about Stoneburner's performance*. There is not the slightest hint, in either rating official's

It is these facts that make this OER a referred report.

b. The ABCMR Repeated Its Errors In *Muse* Here

In *Muse*, its decision never explained how the material and arguments presented were weighed and appraised, yet it contained minimal discussion of the primary rating issues raised there, 21 Cl. Ct. at 611. Here, it not only never explained how the material and arguments were weighed and appraised, it never discussed Appellant's primary rating issue that the SR's potential evaluation in Part VIIa and his last comment in Part VIIb made it a referred report. Like *Muse*, its decision did not show on the record it was based upon a balanced consideration of all the evidence available and presented. It gave no explanation how it weighed and appraised the records listed as "*EVIDENCE OF RECORD*" against his arguments. It incorrectly defined[14] the 'a do not promote in Part Vd' criteria of para 4-27e, by omitting that subsection's last phrase '*or narrative comments to that effect from any rating official*'. Since they did not correctly define criteria for a referred report, neither of them could properly weigh Stoneburner's primary rating issues against the referred report criteria of AR 623-105.

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performance evaluation, that his performance warrant's a mediocre appraisal of his potential for promotion to colonel. Richardson's *performance* evaluation also describes the overall performance of an officer best described as 'outstanding' or at least 'superior'. His *potential evaluation* of Stoneburner should also correspond with one appropriate for an officer best described as either 'outstanding' or 'superior'.

[14] The Court of Appeals incorrectly defined a referred report as one that *has an adverse impact* upon an officer's career, 152 F.3d at 487, even though the ABCMR defined such a report as one that *'may have an adverse impact'* (See C-4).

c. The ABCMR Failed To Discuss An Important Aspect Of This Case

It failed to discuss the primary rating issue just set forth above. As well, neither did the OSRB Advisory Opinion or the second OSRB Case Summary discuss this issue when he had raised it as early as the second OSRB appeal. It failed to compare the OER rating scheme orders for March and April 1987. It blindly accepted the Advisory Opinion's finding his SR did not err in rendering ratings '*using the published rating scheme*." If it examined these two orders, it would have seen the SR was in the rating chain for only 58 and not 60 days. (*See* M-1 and M2).

It never compared the Computation of Rating Period Exhibit and ending date of the inclusive service for the Meritorious Service Medal (MSM) to see when Stoneburner's 'previous performance' had to have ended. If it had, it could see the ending date of the service for the MSM was March 1, 1987. It could then have seen that his 'previous performance' had to include the period up to January 1987 because English said he prepared the award of the MSM *based on Appellant's previous performance* before Appellant's performance began to 'significantly deteriorate' for the last six months of the rating period. This calendar exhibit shows English could not have observed Stoneburner's performance 'significantly deteriorate' for six months thereafter because he was on leave, TDY and permissive TDY for 93 days between January 30, 1987 and May 28, 1987 when Appellant departed from Fort Hood and the rating period ended (*leaving only 25 days he could have been in the DRCS after January 30th*). It shows there were not 180 days left after the end of his 'previous' performance (*which the MSM was based upon according to English*) to enable him to observe Stoneburner's performance 'significantly deteriorate' over the last six months of the rating period.

Also, English said he told Appellant to continue work on the Annual Training Plan for AT-88 (*See* J-7), after he returned from 35 days TDY on March 9th, and that Appellant

was to do so until he departed. It is strange he allowed him to take leave and TDY for schooling for his next assignment for another 46 days which left only 28 scattered days (including weekends and a holiday) he could 'work' on the AT-88 training Plan until he departed. It is also curious that Major Mann (his replacement) and two other DA civilians attended site selection conferences organized by the five Continental Army's during February and the First of March.[15] When Stoneburner returned from TDY in March they were already working on AT-88.

The fact he told LTC Coachys to consider Stoneburner's desk and work area 'his permanent work place' since Stoneburner would not be spending much time in the DRCS (*See* K-1) is more proof English never told Appellant to continue work on AT-88 and that he never observed Appellant's performance 'significantly deteriorate' over the last six months prior to May 29, 1987.

The III Corps Commander approved the AT-87 Training Plan on March 9th (*See* R-1). Major Mann and two others were working on AT-88 when Appellant returned from TDY on March 9th. Plus, LTC Newman's memorandum (*See* R-30 and R-31) shows he couldn't have been working on AT-89 either since the go-to-war CAPSTONE alignment down-traces were not released prior to October 1987. The III Corps Commander's first priority for the DRCS, at that time, was to train only those reserve or guard units aligned to III Corps on a wartime basis. In May 1987, and prior thereto, III Corps was using the CAPSTONE 86 down-traces to determine which units it would invite to train at Fort Hood. If the DRCS had used soon-to-be-outdated CAPSTONE down traces as the basis for AT-89 planning, when the CAPSTONE 88 down traces would be released in October 1987, General Saint would have had a kitten. Richardson would never have heard the end of it and may have been fired.

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[15] See R-10 and R-13, R-14 and R-17, R-18 and R-21, R-22 and R-25, R-26 and R-29.

These facts contradict his assertion that he told Appellant to work continuously on the annual training plan until he departed.

Both the OSRB and ABCMR accepted at face value English's tale of Appellant's performance 'significantly deteriorating' over the last six months of the rating period. These documented facts strongly suggest he fabricated his tale of Stoneburner's 'significantly deteriorated' performance over the last six months of the OER rating period.

The rater's derogatory comments (*See* J-6 and J-7) describe an officer who fails to perform and complete his assigned tasks competently and who fails, as well, to comply at all times with the professional standards expected of an officer. AR 623-105 has a phrase for such unacceptable performance and conduct unbecoming an officer – 'relief for cause' (*See* F-17 and F-18). It is incomprehensible that English observed Appellant's unacceptable performance for the majority of the time he was present in the DRCS but did not write one word about these 'facts' on the OER. Common sense tells us he had a duty[16] to do so.

If this 'significantly deteriorated' performance took place as English said it did, it never lasted for six months. Woodward or Richardson (whoever was SR at the time) would fire Stoneburner and relieve him for cause long before it had gone

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[16] The tale he told was not a few isolated incidents but a continuous course of conduct over six months prior to Stoneburner's departure. His description of this 'significantly deteriorated' performance also raises a security issue. He stated Stoneburner was absent from his duty place at numerous times with no explanation to the chain of command. Stoneburner had just obtained a top secret clearance for his next assignment at Fort McPherson, Georgia. No officer who is absent on numerous occasions and offers no explanation for his absences or where he was can be trusted to hold a top secret clearance – he is simply too great a risk to the Armed Forces. It is also beyond belief that his supervisors, including English, would not have threatened to bring charges against Stoneburner for his insubordination and, in effect, allowed Stoneburner to tell them 'I won't tell you!' and never pressed the issue further.

on for six months. No senior military supervisor would permit such unacceptable performance and conduct to continue for six months.

d. The Rater's Promotion Recommendation and Narrative Comment on Potential

English made only one comment in Part Ve. If he amplified and explained his promotion recommendation as required by para 4-14c(5), it had to be in that sentence. His comment dealt with continued participation as an Individual Ready Reservist in the Army Reserve after he reached his mandatory release from active duty. It was date specific not a general statement. A reserve officer is given a mandatory removal date (it is called a mandatory release from active duty for regular Army officers) for each grade he serves in. He is given one date as a major, another as a LTC, and a third as a colonel. Each date is grade specific. His active participation in the reserve ends at that time unless he is promoted before that date. Upon promotion he receives a new mandatory removal date suitable for his new grade.

The ambiguity and contradiction in English's comment is the date. 'June 1990' is based on Stoneburner's promotion to LTC. On that date he transferred to the retired reserve[17] since that was the time selected for the end of his active reserve service **as a LTC**. He could only continue participation in the Army reserve if promoted to colonel. He was not. Ambiguity and contradiction are present. It serves no purpose to recommend his release from active duty on a date based on his present grade of LTC if English wanted him promoted to colonel with his contemporaries in 1989. He would recommend this only if he didn't want Appellant promoted in 1989 so he would have to leave active duty and enter the retired reserve in June 1990. This is exactly what occurred as a result of this OER.

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[17] See T-3 and T-4.

This is the contradiction in this one sentence in the *Comment on Potential* block in Part Ve. His statement to OSRB about Appellant reaching his potential as a LTC is further proof he did not want Stoneburner promoted with his contemporaries. If he wanted him promoted in 1989, he could have simply stated promote this officer with his contemporaries.

e. Richardson's SR Potential Evaluation and Narrative Comment On Potential in Part VII of the OER

Para 4-16d(2) and (3) require narrative comments by a SR that expand and explain his potential evaluation. As a colonel he had to know he must make at least one narrative comment that explained and expanded upon his potential evaluation selection. The facts show he complied with this requirement.

He gave Stoneburner a promotion potential evaluation which is at least mediocre (the Court of Appeals so characterized it, 152 F.3d at 486), if not, marginal. He marked the fifth block from the top of the SR Profile sending a signal to DA selection boards thereby since he could have made Stoneburner his lowest rated LTC by merely marking the fourth block (Richardson had never before rated a LTC lower than the third block).

In the inflated world of OER reports it has been held that OERs with numerical scores one point below the maximum for both overall evaluation and for promotion potential were 'killer' OERs precluding that officer's further promotion.[18] In this case, Appellant was pending promotion consideration for colonel.[19]

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[18] See, *Skinner v. United States,* 594 F.2d 825 (Ct.Cl. 1979).

[19] Traditionally, selection boards for colonel select far less than half of the officer's considered for promotion to that grade because there are far fewer Army duty positions which require a colonel.

Here, in regard to the narrative comments on promotion by both rating officials the Court of Appeals said they were '*a far cry from the derogatory comments found in Muse's OER*' and then concluded that '*Stoneburner's raters comments do not rise to a level that could be considered adverse to his career*', 152 F.3d at 490 (*See* A-12).

Muse involved derogatory comments on *performance*. This case involves derogatory comments on *promotion potential*. The comments here would be a far cry from the derogatory comments found in Muse's OER. They might also appear not to rise to a level that could be considered adverse to his career. This is because derogatory comments on *promotion potential* are expressed differently from comments about *specific examples of performance*.[20]

In addition to his mediocre SR promotion potential selection, he commented that Stoneburner should serve 'at that level'. The phrase preceding 'at that level' explains those words and their meaning. That phrase is 'consistently meets the standards of Lieutenant Colonel on active duty'. He implied Appellant should serve in duty positions requiring levels of performance *which consistently require standards of performance expected of a lieutenant colonel on active duty*. As well, this last phrase indicates his belief Stoneburner was not capable of rendering a level of performance above that expected for a lieutenant colonel. Therefore, Stoneburner was not promotable to colonel because promotion assumes the officer can perform at the level expected for the next higher grade. His OSRB comment that *Stoneburner had no potential for promotion* is more proof he did not want him promoted. His evaluation accomplished this.

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[20] A specific example of performance must be uncomplimentary, disparaging, denigrating, or malign that aspect of performance otherwise it can never be derogatory. Without such an uncomplimentary or disparaging characterization of the officer's performance, the specific example of same never could be considered derogatory and the report not one which may have an adverse impact on the officer's career.

The petition should be granted because the ABCMR: *failed to discuss an important aspect of this case*, namely the SR's *potential* evaluation. *The reasons stated for its decision were contrary to the evidence* (1. the published OER RATING SCHEME 2. the raters inconsistent and contradictory comments to OSRB and his OER input [The OSRB Advisory Opinion said Stoneburner's allegation that they were inconsistent and contradictory *was unfounded.*]). These and many other inconsistencies and contradictions in the record indicate *there was no rational connection between the 'facts found' and its decision to deny his application*. The ABCMR and the Court of Appeals failed to correctly define the criteria for a referred report.

Documents in the record contradict English's tale of Appellant's 'significantly deteriorated', performance. They strongly suggest his story is fabrication so the ABCMR ended up relying on a factor Congress never intended it to rely on, namely, false testimony,[21] thus it's action in this case was arbitrary and capricious. The petition should be granted for these reasons.

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[21] In the CI, English said he provided no input, *verbal* or otherwise, to the SR on the OER. He repeated this again to OSRB. But Richardson said he told him several times between March and May 1987 that Stoneburner's performance was 'less than acceptable'. If he told the SR this, he had to know that he was providing *verbal input* to the SR's portion of the OER. One will never know whether English did tell him this, and is attempting to conceal the fact that he did provide *verbal input to the SR*, or if Richardson made this up. Also, the record is silent as to whether Richardson ever confronted English, upon receiving the OER after he entered his rater's entries, as to why he was now giving Stoneburner's performance the highest rating he could give when he had previously said it was less than acceptable. This, it would seem, was a question the OSRB and the ABCMR should have asked. There is not a word in the record indicating this thought ever entered either's mind. As well, it is strange Richardson never mentioned one word in his OSRB interviews, if they occurred, about the 'facts' of Stoneburner's 'significantly deteriorated' performance, as English related them, and merely noted the rater said his performance was less than acceptable.

III

THE PETITION SHOULD BE GRANTED BECAUSE AR 623-105 VIOLATES EQUAL PROTECTION AS GUARANTEED BY THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

The ABCMR found the senior rater ("SR"), was in the rating chain for only 88 days. Appellant was in nonrated status for 53 of those days (actually, the SR had only 16 scattered days to evaluate Appellant's duty performance and promotion potential) (*See* J-4). An OER's purpose and function is to evaluate performance of duty and an officer's promotion potential from the former. AR 623-105 specifically requires that each rating official evaluate performance and potential by reviewing an officer's performance of assigned duties during the rating period.

AR 623-105 requires the same rater to be designated in the rating chain while the evaluated officer remains in rated status for at least a 90 day period para 4-10.c.(3) (*See* F-12). If the rated officer never remains in rated status for at least 90 days under the same rater, that rater cannot qualify to evaluate him. AR 623-105 permits all other rating officials to evaluate after 90 calendar days without regard to the rated/non-rated status of the officer rated. Other rating officials qualify to evaluate whether or not an officer is given any opportunity to demonstrate his performance of duty over those 90 days. Therefore, each officer rated is guaranteed a minimum period to demonstrate his performance of duty to his rater but, not to other rating officials, unless he remains in rated status.

It is critical for this Court to know the difference between rated and nonrated time in its analysis and determination of this equal protection issue. 'Rated' days occur when a officer performs work related-to-his-duty-position; 'nonrated' days occur when he does not. Rated time is the norm; nonrated time occurs infrequently. Examples of nonrated time are 30 or more consecutive days of TDY, schooling, leave, or hospitalization.

An officer's physical location has no bearing on his rated/nonrated status. So long as he is performing tasks related-to-his-duty-assignment, it is immaterial he is not located at his duty station. Appellant now discusses what he must establish to state a prima facie case that AR 623-105 violates equal protection.

To make out a disparate impact warranting further due process scrutiny, appellant must show the class which is purportedly discriminated against suffers significant deprivation of a benefit or imposition of a substantial burden, *Califano v. Boles,* 443 U.S. 282, at 295 (1979). It is only when different treatment of classes causes invidious discrimination that the Constitution provides relief to the adversely impacted class, *American Party Of Texas v. White,* 415 U.S. 767 at 781 (1974). The general rule is that equal protection requires that all persons be treated alike under like circumstances and conditions both in privileges conferred and liabilities imposed, *Hartford Steam Roller Inspection & Ins. Co. v. Harrison,* 301 U.S. 459 at 461-462 (1937).

Appellant's belief AR 623-105 violates equal protection is based on the fact that, while an officer is in nonrated time, he performs no duty-related task a SR can consider to evaluate his performance of duty. Since the evaluation of promotion potential is based on the rating official's evaluation of demonstrated performance of duty, Appellant believes it is unfair to include days in which no duty-related work or task occurs to determine if rating officials, other than the rater, qualify to evaluate.

The members of this adversely impacted class have a substantial burden, other officers do not have, trying to persuade SR's they are qualified for promotion to the next higher grade. This substantial burden exists due to the fact that a SR has little opportunity to evaluate the officer's performance of his duty-related tasks. The SR's limited opportunity to do so occurs because each of the officers in this class are in nonrated time for most of the days the SR serves in the rating chain. This adversely impacted class includes all officers

whose SR has not qualified to evaluate him based on at least 60 days of rated time. While, in theory, an officer may qualify as a member of this class with only one day of nonrated time impacting on the 60 day minimum-time-in-position calculation, in practice far more time than one accrued nonrated day will enter into the 60 day minimum-time-in-position calculation because nonrated time usually occurs in bundles of no less than 30 consecutive days. Para 4-10.c.(2) provides a comprehensive description of nonrated time (*See* F-13). Therefore, due to the manner in which nonrated time usually occurs, each member of this class usually accrues a substantial amount of nonrated time during the 60 calendar day minimum period in which a SR qualifies to evaluate.

Just as the members of this class have a substantial burden, other officers do not have, trying to persuade a SR they are qualified for promotion, the members of this adversely impacted class are also denied the benefit of a 60 day minimum-time-in-position period to demonstrate their performance of duty other officers have who remain in rated time.

All officers are guaranteed 90 days to demonstrate their performance of duty to the rater. Hence, all are treated equally in regard to rater evaluation qualifications. However, this is not true in respect to the qualifications for a SR. An officer is only guaranteed a 60 day minimum period to demonstrate his performance of duty-related tasks if he remains in rated time. This is because the 60 day period qualifying a SR includes both rated and nonrated time or calendar days. Thus, calendar days may be all rated time, all nonrated time, or any combination of rated/nonrated time which is less than 60 days of rated time.

Where the 60 day minimum-time-in-position period consists entirely of nonrated time, the officer evaluated has no opportunity to demonstrate his performance of duty-related tasks to his SR. This is because the officer remains in nonrated time. He performs no duty-related tasks since nonrated time, by definition, has nothing to do with duty performance.

In situations where a SR just meets the 60 day minimum-time-in-position requirement, and the rated officer remains in nonrated time for that entire 60 calendar day period, a SR would have a most difficult, if not impossible, task to render a fair, impartial, and objective evaluation of such officer's performance since the officer did not perform any duty-related tasks which a SR could evaluate. If such a SR would have a most difficult, if not impossible, task to evaluate *performance,* it seems that any attempt by such a SR to evaluate *potential* would be even more complicated and arbitrary.

The entire OER scheme *is driven by demonstration of duty-performance.* SR's, and other raters, must first make an assessment of the officer's performance of duty-related tasks required or implied by his present duty position. Then, based upon the evaluation of his performance, the officer's potential for promotion is determined. Thus, an officer's promotion potential is derived from the evaluation of that officer's performance of all duty-related tasks required by his present duty position.[22]

Appellant agrees that the "Rational-Issue Test" is appropriate for the resolution of this equal protection issue.

AR 623-105 is a management tool. Its purpose is to determine which officers are best qualified to be selected for promotion, command, schooling, assignments, and retention. It also ensures that those less qualified are not selected for these purposes. This purpose is more than the mere accomplishment of an economic or social goal as it is vitally important that only the best qualified officers be selected for these purposes to maintain the safety and welfare of the nation, enhance good order and discipline in the Army, and prevent an injustice to individuals. Appellant concedes AR 623-105 probably does not create a suspect class requiring greater scrutiny by this Court.

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[22] Para 3-12. (See F-7).

To determine whether AR 623-105 satisfies equal protection, the class created must be compared to the objective of the regulation itself and whether the classification rests upon some ground of difference having a fair and substantial relation to the object for which it was proposed. Thus, the Fifth Amendment is only offended if the Army's classification rests on grounds wholly irrelevant to the achievement of the Army's objective.[23]

In order to satisfy the Army's objective, AR 623-105 must be administered impartially without favoritism to any individual, group, or class of officers. Since all rating officials assess performance, and the assessment of potential is based on each rater's performance evaluation, it seems reasonable that each of them only qualify to evaluate based on days in which the officer rated performs tasks related-to-his-duty-position.

Selection boards and personnel management systems are used for Department of the Army (DA) evaluations and these evaluations cover an officer's entire career. DA evaluations *focus on an officer's potential.* DA evaluations are *judgments on the officer's ability to perform at higher grades,* whether the officer should be given greater responsibility in his present grade, whether he should be retained on active duty, or eliminated, para 1-5 (*See* F-2 and F-3). *Duty evaluations* are single time-and-place evaluations and *are used to make DA evaluations* para, 1-5b (3) (*See* F-1).

The Court of Appeals decided there was a rational basis for the different treatment for SR qualifications in contrast to that imposed upon a rater. It based its decision on DA's reply to General Saint's Request for Policy Clarification,[24] 152 F.3d

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[23] The objective of AR 623-105 is to identify those officer's best qualified for promotion, assignments, retention, and those that are not.

[24] General Saint was so bothered by the facts of this OER and the SR's *potential evaluation* that he tried to change Army policy so that all rating officials, not just the rater, qualify to evaluate based solely on rated

485 at 489. The administrative burden imposed on the field was another, 152 F.3d at 491.

The pertinent parts of DA's reply[25] stated that the rater has the most important relationship with the rated officer. Hence, it is the only relationship affected by nonrated time. DA also argued that if senior rater's were required to qualify solely on rated time it would impose an administrative burden on the field that was not warranted.

DA's reply to General Saint makes several misstatements and is self-contradictory. The field would not have a requirement to keep track of nonrated time *for the rater and all other rating officials to determine when a report is due* if the minimum-time-in-position calculation for all other rating officials had to exclude nonrated time. Nonrated time is being tracked for the rater and has been since the days of the Morning Report.

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time 'to preclude injustice to individuals and disservice to the Army. (See N-1).

[25] 2. The relationship between the rater and the rated officer is the most important in the rating chain. It most often determines the nature of performance and the resulting evaluation. As a result, this relationship requires the longest qualification requirement, determination whether a report is prepared, and is the only relationship affected by the rated officer's non-rated time.

3. The responsibility relationship between the rated officer and other rating officials (dual supervisor, intermediate rater, or senior rater) has less impact on actual performance and is mainly associated with an evaluation of potential. These relationships, therefore, deliberately have shorter qualification requirements, do not normally determine whether a report is required, and are not affected by rated officer non-rated time.

4. Your recommendation would require the field to track nonrated time for the rater and all other rating officials to determine when a report is due. Because situations where rated officer nonrated time affects the ability of other rating officials to prepare accurate evaluations are relatively rare, they can easily be handled on a case-by-case basis. In this matter, therefore, we believe the administrative burden imposed on the field to keep track of nonrated time is not warranted. (See N-2).

In reviewing DA's response to General Saint, Michael Boone[26] had sharp criticism for the drafter[27] of DA's reply. Michael Boone stated that the reply to General Saint is neither factual nor accurate from a technical perspective about Army records keeping.[28] He pointed out nonrated time is tracked for every officer since every officer is evaluated and has a designated rater in his rating chain. He continued, the " 'administrative burden' to track nonrated time is a give" and if it were not tracked an OER could never be rendered. His memorandum also made the point the Army bears the administrative burden of collecting and storing nonrated time as a part of the cost of doing business and that it ability to track nonrated time for the rater was unquestioned. (*See* O-1).

Since nonrated time is tracked for the rater, and each officer has a rater who evaluates him, it is just not true it

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[26] At the time this OER was rendered, Michael J. Boone was an Analyst in the Automation Branch, Office of the Adjutant General, United States Forces Command, Fort McPherson, Georgia. He was one of the many Department of the Army civilians whose job it was to keep track of nonrated time along with his other responsibilities and functions involved in Army records keeping.

[27] Michael Boone realized that, even though the reply was signed by Major General Jones, some staff officer in his command drafted it.

[28] The pertinent parts of his memorandum are set forth here.

1. Paragraph 4 of reference correspondence [DA's Reply to General Saint] is neither factual nor accurate from a technical perspective about Army records keeping. It is also self contradictory. Note the following:

a. The "administrative" burden to track nonrated time is a given. If it were not tracked, OER could not be rendered. Our ability to, "track nonrated time for the rater", is unquestioned. How can the writer, obviously a commissioned officer, ignore the fact that as the nonrated time for the officers he rates is tracked so is his nonrated time – because he is also rated by someone.

2. The US Army does have a duty status history on each soldier. This record is retired and available as a research tool to other government agencies. In so far as duty status correlates to nonrated time we bear the administrative burden of collecting and storing this data as part of the cost of doing business.

would require the field to keep track of nonrated time to determine when a report is due *if SR's were required to qualify to evaluate on the basis of rated time only.* The SR has nothing to do with when a report is due. That is determined by the status of the rated officer. A report becomes due *when he has accumulated at least 90 days of rated time under the supervision of his present rater.*

Also, the reply's first paragraph is primarily a description of what a rater is and how a rater qualifies to evaluate: the "rated officer rater relationship" has the longest qualification period and determines whether a report is prepared; it is the only rating chain relationship affected by nonrated time. *It is a misstatement of fact to state that* the "rated officer rater relationship" most often determines the nature of the performance and the resulting evaluation. The SR has, at least, *an equal impact on the nature of the performance and the resulting evaluation since AR 623-105 requires him to make an independent evaluation of the officer's performance and potential.*

Also, the SR is the only rating official whose *potential evaluations* are profiled. They are profiled *by each grade of officer he senior rates* and DA maintains a complete history by grade for each SR. This SR profile is so important that DA permits a SR to restart his profile to better differentiate those he senior rates if necessary. As well, *DA evaluations focus on an officer's potential, the SR portion of the OER has the greatest impact on the potential evaluation of the officer not the rater.* These facts show that it is just not true that the "rater-rated officer relationship" is the most important in the rating chain. The rater and SR relationships with the rated officer are of equal importance. They fulfill different, but equal, functions[29] on the OER and it is plain nonsense to assert that one is more important than the other.

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[29] The senior rater uses his or her position and experience to evaluate the rated officer from a broad organizational perspective. His or her

AR 623-105 violates equal protection. The petition should be granted for this reason.

CONCLUSION

This case presents questions of exceptional importance –

a. Whether Army Regulation, AR 623-105, permits a rating official's evaluation qualification starting date to relate back previous in time to the date he was first designated as a rating official in the rated officer's rating chain.

b. Whether the Court of Appeals ruling here conflicts with this Court's decision in *Motor Vehicle Mfrs Ass'n v. State Farm Mut.*, 463 U.S. 29 at 43 (1983) as it pertains to review under the arbitrary and capricious standard.

c. Whether Army Regulation 623-105 violates equal protection.

Unless this Court grants the writ Petitioner will be denied due process forever suffering the consequences of a misinterpretation of AR 623-105, the 'rubber stamp' failure of the ABCMR to make its own independent examination of the evidence, and he will forever be denied equal protection of the law.

Accordingly, Petitioner respectfully requests that his petition for writ of certiorari be granted.

Respectfully submitted,

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evaluation is the link between the day-to-day observation of the rated officer's performance by the rater and intermediate rater and the longer term evaluation of the rated officer's potential by DA selection boards, para 3-10. (See F-6).

APPENDIX

APPENDIX A – *Stoneburner v. Secretary of the Army*, 152 F.3d 485 (5th Cir. 1998) A-1

APPENDIX B – *Stoneburner v. Secretary of the Army*, Case No. W96CA489, W.D. Tex., 1997 (unpublished opinion) B-1

APPENDIX C – MEMORANDUM of CONSIDERATION by the Army Board for Correction of Military Records (ABCMR)..... C-1

APPENDIX D – Court of Appeals Order Denying Stoneburner's Petition for Rehearing..... D-1

APPENDIX E – Constitutional Provisions and Army Regulations..... E-1

APPENDIX F – Pertinent Extracts from Army Regulation (AR) 623-105 ..... F-1

APPENDIX G – The Contested Officer Evaluation Report (OER) G-1

APPENDIX H – Commander's Inquiry Report and Computation of Rating Period Exhibit H-1

APPENDIX I – First Appeal to the Officer Special Review Board (OSRB)..... I-1

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APPENDIX – Continued

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APPENDIX M – OER RATING SCHEME for March 1987 and April 1987 ..... M-1

APPENDIX N – General Saint's Request for Policy Clarification and DA's Response to General Saint's Request for Policy Clarification ... N-1

APPENDIX O – Memorandum For Record by Michael J. Boone, Analyst in the Office of the Adjutant General, United States Forces Command, Fort McPherson, Georgia O-1

APPENDIX P – Award of the Meritorious Service Medal (MSM) to Lieutenant Colonel (LTC) Stoneburner ... P-1

APPENDIX Q – Motion to Supplement the Record and the Court of Appeals Order Referring This Motion to the Merits of the Appeal Q-1

APPENDIX R – Supplemental Memorandum to the ABCMR, Dated 27 June 1990, by LTC Stoneburner, DRCS Annual Training Documents, for AT-87 and AT-88, and Memorandum, Subject: Planning for Training Year 1989, Dated June 21, 1990 by LTC (ret) Newman R-1

APPENDIX S – Second Appeal Memorandum of LTC Stoneburner to OSRB S-1

APPENDIX – Continued

APPENDIX T – Department of the Army Cover Letter for the Retirement of LTC Stoneburner, Dated 18 Jun. 1990, Letter from Commanding General, ARPERCEN, St. Louis, Mo., Dated 18 Jun. 1990, Certificate of Appreciation from Chief, Army Reserve, Dated 27 June 1990, and Retired Reserve Transfer Certificate, Dated 27 June 1990 ..... T-1

APPENDIX A

COURT OF APPEALS OPINION IN

Stoneburner v. Secretary of the Army,
152 F.3d 485 (5th Cir.1998)

This Appendix has 15 pages (A-1 through A-15)

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 97-50765
Summary Calendar

WILLIAM D. STONEBURNER, Lieutenant Colonel,

Plaintiff-Appellant,

VERSUS

SECRETARY OF THE ARMY; ARMY BOARD FOR CORRECTIONS OF MILITARY RECORDS,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas

(Filed Sep. 08, 1998)

Before DUHÉ, DeMOSS and DENNIS, Circuit Judges

PER CURIAM:

William D. Stoneburner, a Lieutenant Colonel in the United States Army Reserve, appeals the grant of summary judgment dismissing his challenge to an Army Board for Correction of Military Records' ("ABCMR") decision. Stoneburner sought to have the evaluations submitted by his rating officers removed from his Officer Evaluation Report ("OER"). He alleges that the ABCMR's denial of his request was arbitrary and capricious, an abuse of discretion, and unsupported by substantial evidence. He also alleges that the Army's evaluation procedures violate the Equal Protection Clause. We affirm.

I. BACKGROUND

While on active duty at Fort Hood, Texas, Stoneburner underwent a routine performance and promotion potential evaluation covering the period from June 1, 1986 through May 31, 1987. He was evaluated by the rater, Lt. Colonel Ronald W. English, ("English") and by the senior rater, Colonel Lawrence C. Richardson ("Richardson"). Richardson became Stoneburner's commander and senior rater March 2, 1987. From that date through May 28, 1987, his last day of active duty at Fort Hood, Stoneburner was in a nonrated status[1] for 53 days and was absent from observation another 12 days.

To qualify as a senior rater, AR 623-105, ¶ 3-10(b)(1) requires that the senior rater serve in that capacity for a minimum of 60 calendar days, without regard to the rated officer's rated or nonrated status. The rater, however, qualifies to evaluate the rated officer only if the rated officer remains in a rated status at least 90 days during the rating period. AR 623-105, ¶ 4-10(c)(3). Richardson had 88 days, including both rated and nonrated days, to observe and evaluate Stoneburner; English also qualified as an evaluator, having observed Stoneburner for at least 90 rated days before rendering his report.

English rated Stoneburner favorably, giving him the highest ratings for performance and professionalism and described his performance and potential as "always

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[1] Being in nonrated status means that the officer being evaluated is not performing work related to his duty position. Stoneburner was on leave and in school preparing for a new assignment during the 53 days.

exceed[ing] requirement[s]." He commented that "LTC Stoneburner has performed his duties as Operations and Training Officer in an exemplary manner. . . . LTC Stoneburner is a fine U.S. Army Reserve Officer and has demonstrated his ability to serve on active duty with the competence to make a professional contribution." He recommended, however, that Stoneburner be promoted with his contemporaries, not ahead of them. He also recommended that Stoneburner be continued in the U.S. Army Reserve when he reached his mandatory release from active duty.

Richardson, the senior rater, assigned Stoneburner a mediocre rating in potential, two ranks lower than other lieutenant colonels whom he evaluated at the same time. He added the following narrative comments to that section of the OER:

> Fully concur with [the] rater's comments. During my observation of LTC Stoneburner's performance he has demonstrated a very capable ability to plan, schedule, and coordinate Reserve Component training. He is a good staff officer and consistantly [sic] meets the standards of Lieutenant Colonel on active duty and should continue to serve at that level on a higher headquarters staff where he can make significant contributions to the mobilization and training readiness of Reserve Component units.

After receiving the OER, Stoneburner requested a "Commander's Inquiry" to correct alleged errors and injustices in the report. Administrative errors were corrected and the Commander, Lt. General Crosbie Saint, determined that those errors did not invalidate the

report. He further determined that the senior rater evaluation and comments were not illegal because Richardson was technically qualified to perform the rating. He did question the fairness of an evaluation by a senior rater who had had only a minimum observation period rather than an evaluation completed by the longer-serving departing senior rater.

Stoneburner next appealed to the Officer Special Review Board ("OSRB"), requesting that the OER senior rater portion be deleted because the evaluation was unjust and illegal. In an OSRB interview, Richardson acknowledged that he had placed Stoneburner at the low end of his personal senior rater profile. He insisted, however, that the ranking was appropriate, based on his observations and review of Stoneburner's work. He viewed the OER results as fair, accurate, and objective. The OSRB found no basis for making an exception to the regulatory policy that determines a senior rater's eligibility. It further concluded that Stoneburner had not provided clear and convincing evidence to justify a deletion or amendment to the OER.

Stoneburner appealed a second time to the OSRB, raising essentially the same allegations. The OSRB contacted the rater, English, who reported that Stoneburner's performance over the last five to six months of the rating period had deteriorated significantly. He cited "a bad attitude" and noted that Stoneburner "did not want to come to work and, when he did, his appearance did not represent what was expected of a field grade officer."

In a second interview, Richardson stated that because of his limited access to Stoneburner, he had "based much

of his impression of the appellant's performance and potential on comments from the previous SR [senior rater] during their two week overlap when the SR 'sized-up' the appellant and other personnel." Richardson further explained that he had personally prepared his own OER comments and, because he did not see Stoneburner as having potential for promotion to full colonel, he had rated him accordingly.

The OSRB denied this second appeal, again finding that Stoneburner had failed to provide clear and convincing evidence to justify the deletion or amendment of the OER. It did not address Stoneburner's constitutional challenge to AR 623-105; it did determine, however, that the senior rater had adequate information available to prepare his portion of the OER. The OSRB further found that the rater's evaluation was not contradictory or ambiguous.

Stoneburner's third appeal was to the Army Board for Corrections of Military Records. The ABCMR concluded, *inter alia*, that the OER did not meet the criteria to be classified as a referred report.[2] It found that the senior rater had met the minimum time in the position necessary to provide an evaluation. It further found that Stoneburner's due process claim was not supported by the record because the applicable administrative procedures had been followed. It determined that the OER appeared to "represent a fair, objective and valid appraisal of

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[2] A referred report is one that has an adverse impact upon the rated officer's military career. Such reports are referred to the rated officer so that he may respond to the allegations before the report is placed in his personnel file. AR 623-105 4-27.

[Stoneburner's] demonstrated performance and potential during the period in question." In making its decision, the ABCMR obtained an advisory opinion from the OSRB. The OSRB found for the third time that Stoneburner had not provided clear and convincing evidence to support his contentions nor had he established that the OER met the AR 623-105 referral requirements. Thus the ABCMR determined that Stoneburner failed to submit sufficient relevant evidence to demonstrate the existence of probable error or injustice.

Stoneburner appealed the ABCMR decision to the district court. He claimed that the ABCMR's decision was arbitrary, capricious, contrary to law, or unsupported by substantial evidence. His amended complaint alleged that the OER was erroneous, improper, and unjust because various provisions of AR 623-105 were disregarded. The Army moved for summary judgment, denying Stoneburner's allegations against the ABCMR.

Stoneburner filed a cross-motion for summary judgment. He attacked the constitutionality of the ABCMR decision and additionally argued that the ABCMR's refusal to classify the contested OER as a "referred" report was arbitrary and capricious. He pointed to Richardson's interview and statement that Stoneburner lacked the potential to be a full colonel in support of this contention. He also disputed the ABCMR's decision that the OER was not invalid. He again argued that Richardson was not eligible under AR 623-105, ¶ 3-10(b)(1) to act as a senior rater. He contended that regulation's inclusion of non-rated time for qualification denied Richardson sufficient observation time for a just evaluation.

The district court granted the Army summary judgment. It determined that the ABCMR had the entire record before it in making its decision. It concluded that the record supported the ABCMR's determination that the OER should not have been classified as a referred report, and that Stoneburner failed to show that the ABCMR's decision to deny him relief was either arbitrary or capricious or that it was not based upon substantial evidence. The district court also determined that Stoneburner did not identify a protected property interest and so did not establish the deprivation of either substantive or procedural due process. Finally, the district court concluded that Stoneburner had not identified the manner in which he had been denied equal protection.

Stoneburner moved for reconsideration of the classification of the OER as a referred report. He also requested that the court clarify whether it had determined that AR 623-105 violates the Equal Protection Clause because it permits an officer to be rated by a senior rater who may have less than 60 days of rated time within which to observe and evaluate the rated officer. The district court denied the motion. Stoneburner appeals.

II. DISCUSSION

A. Standard of Review

This court reviews a district court's grant of summary judgment *de novo*, applying the same standard as the district court. Fed. R. Civ. P. 56(c).

The ABCMR, a civilian board appointed by the Secretary of the Army, has statutory authority to "correct any [Army] record" if necessary to "correct an error or

remove an injustice." 10 U.S.C. ¶ 15552(a)(1). ABCMR decisions "are subject to judicial review and can be set aside if they are arbitrary, capricious or not based on substantial evidence." *Chappell v. Wallace*, 462 U.S. 296, 303 (1983); *Geyen v. Marsh*, 782 F.2d 1351, 1352 (5th Cir.1986). A federal court may not review the ABCMR's decision *de novo*, *Geyen* at 1352, because "[J]udges are not given the task of running the Army." *Orloff v. Willoughby*, 345 U.S. 83 (1953). Thus, judicial review of the Board's decision is limited to the record before the Board at the time of its decision. *Geyen v. Marsh*, 775 F.2d 1303, 1309 (5th Cir.1985).

B. The Officer Evaluation Report

Stoneburner attacks the validity of the OER on two grounds. First, he contends that Richardson was not eligible to serve as his senior rater and thus his ratings were unfair and unjust. Second, he argues that the report should have been referred because it contained negative comments that indicated Stoneburner should not be promoted. We will examine each argument in turn.

To evaluate a rated officer, "the senior rater must normally serve in that capacity for a minimum of 60 calendar days." AR 623-105, ¶ 3-10(b)(1). He is directed to "[u]se all reasonable means to become familiar with the rated officer's performance." AR 623-105, ¶ 3-12(a). Those means include personal contacts, records and reports, and the rater's evaluations. *Id.* In response to General Saint's request for clarification of the policy requiring the rater to qualify based on rated days and the senior rater to qualify solely on calendar days, the U.S.

Total Army Personnel Agency explained the reason for the difference:

> The relationship between the rater and the rated officer is the most important in the rating chain. It most often determines the nature of performance and the resulting evaluation. As a result, this relationship requires the longest qualification requirement, determines whether a report is prepared, and is the only relationship affected by the rated officer's non-rated time.
>
> The responsibility relationship between the rated officer and other rating officials (dual supervisor, intermediate rater, or senior rater) has less impact on actual performance and is mainly associated with an evaluation of potential. These relationships, therefore, deliberately have shorter qualification requirements, do not normally determine whether a report is required, and are not affected by rated officer non-rated time.

The ABCMR thus determined that the nonrated time accrued by the rated officer does not affect the qualifications or eligibility of the senior rater to provide an evaluation after serving the minimum time in that position.

We find that there is substantial evidence to support the ABCMR's decision that Richardson was eligible to serve as Stoneburner's senior rater and that he fairly evaluated Stoneburner. He served as senior rater from his arrival on March 2, 1989, until May 28, 1989, Stoneburner's last duty day of the OER period. This 88-day period therefore met the 60-calendar-day regulatory requirement. Richardson used all the recommended means in making his evaluation, including input from the

prior senior rater. Accordingly, the record supports ABCMR's determination that Richardson was eligible to serve as Stoneburner's senior rater and that his evaluation was "a fair, objective [,] and valid appraisal."

Stoneburner also complains that the ABCMR's decision that the OER was not a referred report was arbitrary and capricious and not based on substantial evidence. We disagree.

> The reports that are classified as referred include:
>
> a. A relief for cause report submitted . . .
>
> b. Any report with negative remarks about the rated officer's professional ethics in Part IVb, and/or in the rating official's narrative evaluation(s).
>
> c. Any report with a rating of 4 or 5 in any of the 14 attributes in Part IVa.
>
> d. Any report resulting in a performance evaluation of "Often failed requirements" or "Usually failed requirements" in Part Vb.
>
> e. Any report with a potential evaluation in Part Vd of "Do not promote" or narrative comments to that effect from any rating official.
>
> f. Any report with a potential evaluation in Part Vd of "Other," where the required explanation has derogatory information.
>
> g. Any report with a senior rater potential evaluation in one of the bottom three blocks in Part VIIa.
>
> h. Any report with ratings or comments that, in the opinion of the senior rater, are so

derogatory that the report may have an adverse impact on the rated officer's career.

i. Any report with an entry of "FAIL" in Part IVa, item 3, indicating noncompliance with AR 350-15; or an entry of "NO" in Part IVa, item 12, indicating noncompliance with AR 600-9.

AR 623-105, ¶ 4-27.

The ABCMR found that Stoneburner's OER met none of the criteria set out above and did not contain ratings and comments so derogatory that the report would have an adverse impact on Stoneburner's career. Stoneburner contends that the evaluation remarks indicating that he should continue to serve at duty positions of similar levels of responsibility were the same as a comment of "do not promote."

English, the rater, gave all "1's," the highest rating, in all 14 attributes in part IVa. In Part IVb, the performance and potential evaluation, he marked the box "Always exceeded requirement[s]." In the comments section, the rater stated "LTC Stoneburner has performed his duties as Operations and Training Officer in an exemplary manner. . . . LTC Stoneburner is a fine U.S. Army Reserve Officer and has demonstrated his ability to serve on active duty with the competence to make a professional contribution." When presented with the choices for promotion, English marked the box "Promote with contemporaries." He did not select "Promote ahead of contemporaries," "Do not promote," or "Other." In commenting on Stoneburner's potential, he wrote, "LTC Stoneburner should be continued in the U.S. Army Reserve as an Individual Ready Reservist when he

reaches his mandatory release from active duty in June 1990." None of these ratings or comments were sufficient to cause the senior rater to consider them derogatory and consequently classify this as a referred report.

The senior rater, Richardson, assigned mediocre ratings to Stoneburner in his portion of the OER. Under Part VIIa, when given nine levels from which to choose in assessing Stoneburner's potential, he marked the fifth level. He commented that Stoneburner "should continue to serve at that level on a higher headquarters staff where he can make significant contributions to the mobilization and training readiness of Reserve Component units."

Stoneburner argues that his OER is similar to the OER in *Muse*, where the rated officer received "superior" ratings in one portion of his report but obviously disparaging remarks in another portion. *Muse v. United States*, 21 Ct.Cl. 592 (1990). In *Muse*, the "superior" ratings were accompanied by clearly contradictory comments: "[Muse's] performance as trial counsel was erratic. he was frequently criticized for ineffective courtroom performance. He is not a good public speaker and was not always thoroughly prepared in court." *Id.* at 606. We find that the raters' comments on Stoneburner's performance and potential a far cry from the derogatory comments found in Muse's OER. We conclude that Stoneburner's raters' comments do not rise to a level that could be considered adverse to his career.

In sum, none of the ratings or comments fall within the guidelines for a referred report. Although interviews with both English and Richardson during the OSRB

investigations reveal that both raters doubted Stoneburner's potential for advancement, the OER did not reflect this.

A review of the summary judgment proof reflects that the ABCMR had the entire record before it in making its decision. That record included the reports and investigations conducted during Stoneburner's two appeals to the OSRB, as well as a third investigation by the OSRB at ABCMR's request. The ABCMR also considered the OER, Stoneburner's application for correction of military records, his military personnel records, the opinions from the OSRB and the pertinent Army regulations and C.F.R. sections. Thus, we find that Stoneburner has not established that the ABCMR's decision was not based on substantial evidence or that it was either arbitrary or capricious. Accordingly, we affirm the district court's ruling on that point.

C. Equal Protection Violation

Stoneburner contends that the Army's regulatory criteria for determining the qualifications of senior raters violate equal protection. He claims that he was denied equal protection because there is no requirement that he, as the rated officer, be in 60 days of rated time in order for the senior rater to be eligible to serve as his senior rater although there is such a requirement for raters.[3] He argues that the evaluation prepared by his senior rater was less fair than an OER prepared for a rated officer who was in rated time for the entire 60 days.

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[3] AR 623-105, ¶ 3-10(b)(1); AR 623-105, ¶ 4-10(c)(3).

The Equal Protection Clause, as incorporated into the Fifth Amendment's due process right[4], essentially directs that all persons similarly situated be treated alike. *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 439 (1985). To state an equal protection claim Stoneburner must allege, *inter* alia, that similarly situated individuals were treated differently. *Muhammad v. Lynaugh*, 966 F.2d 901, 903 (5th Cir.1992). He must also allege purposeful or intentional discrimination. *McCleskey v. Kemp*, 481 U.S. 279 (1987). Stoneburner must show that the Army has no rational basis for treating similarly situated persons differently.[5]

Stoneburner appears to argue that not all lieutenant colonels are treated alike in their ratings, i.e., some have more rated days in which to be evaluated by senior raters than he and other lieutenant colonels have. We question the class Stoneburner has fashioned to make this claim. His argument merely rehashes his earlier claim that Richardson was not qualified to be his senior rater.

Assuming, however, that he has identified a legitimate class, Stoneburner fails to show that the Army's regulation has no rational basis. The regulations explain that the senior rater evaluates the rated officer "from a broad organizational perspective." AR 623-105, ¶ 3-10(a). In its explanation of the different roles of the rater and senior rater, *supra*, ¶ IIB, the U.S. Army Total Personnel Agency opinion provides this rational basis. The Army

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[4] *Bolling v. Sharpe*, 347 U.S. 497 (1954).

[5] *Guerra v. Scruggs*, 942 F.2d 270, 279 (4th Cir.1991). (because no fundamental right or suspect classification is involved, rational basis test applies).

also points to the undue administrative burden officers in the field would suffer if they had to keep track of non-rated time to qualify senior raters. We consider this concern an additional rational basis for requiring only calendar days to qualify a senior rater. We also find that Stoneburner has failed to establish purposeful or intentional discrimination in the application of the Army's OER regulations. Consequently, we affirm the district court's grant of summary judgment on the equal protection issue and deny Stoneburner's motion to enlarge the record.

AFFIRMED.

APPENDIX B

DISTRICT COURT OPINION IN

Stoneburner v. Secretary of the Army,
Case No. W96CA489, W.D. Tex., 1997

(Unpublished Opinion)

This Appendix has 10 pages (B-1 through B-10)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

WILLIAM D. STONEBURNER,	§	
Plaintiff,	§	CIVIL ACTION NO. W-96-CA-489
v.	§	
SECRETARY OF THE ARMY and the ARMY BOARD FOR CORRECTIONS OF MILITARY RECORDS,	§	
Defendants.	§	

ORDER

(Filed Aug. 19, 1997)

Plaintiff brings this action to contest an unfavorable Officer Evaluation Report ("OER"). The parties have filed cross motions for summary judgment. Having reviewed the motions and summary judgment proof, the Court has determined Defendants' motion should be granted and Plaintiff's motion should be denied.

I. BACKGROUND

The facts are not in dispute. In 1987, Plaintiff William D. Stoneburner ("Plaintiff") was a Lieutenant Colonel in the United States Army Reserves serving an Active

Guard and Reserve ("AGR") tour of duty as an Operations and Training Staff Officer at Fort Hood, Texas. During the majority of the time Plaintiff was stationed at Fort Hood, his commander and senior rater was Colonel James K. Woodward ("Col. Woodward"), who consistently gave Plaintiff the highest ratings evaluations. Plaintiff's regular rater during this period was Lieutenant Colonel Ronald W. English ("Lt. Col. English"). Effective March 2, 1987, Col. Woodward was replaced by Colonel Lawrence C. Richardson ("Col. Richardson").

Plaintiff was transferred to Fort McPherson, Georgia, leaving Fort Hood on May 29, 1987 and arriving in Georgia on June 1, 1987. Between March 2 and May 31, 1987, Plaintiff attended various training courses and took approved leave, resulting in Plaintiff being physically present at his Fort Hood duty station for only 37 days during that period.[1] Plaintiff's senior rater for his final evaluation from Fort Hood was Col. Richardson rather than Col. Woodward. The OER covered the period from June 1, 1986 through May 31, 1987. This OER gave Plaintiff high marks, recommending that he be promoted along with his contemporaries.[2] Lt. Col. English included the following comments on Plaintiff's potential: "LTC Stoneburner should be continued in the U.S. Army Reserve as

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[1] The final decision by the ACBMR determined that the senior rater was in that position for 88 days, and that Plaintiff was in a nonrated status for 53 of those days.

[2] An available option would have been a recommendation that Plaintiff be promoted ahead of his contemporanes.

an Individual Ready Reservist when he reaches his mandatory release from active duty in June 1990." Col. Richardson added the following comments:

> Fully concur with the rater's comments. During my observation of LTC Stoneburner's performance he has demonstrated a very capable ability to plan, schedule, and coordinate Reserve Component training. He is a good staff officer and consistently meets the standards of Lieutenant Colonel on active duty and should continue to serve at that level on a higher headquarters staff where he can make significant contributions to the mobilization and training readiness of reserve Component units.

After receiving the evaluation on August 31, 1987, Plaintiff requested a commander's inquiry to correct alleged errors and injustices contained in the OER. Lieutenant General Crosbie Saint ("Gen. Saint") ordered a commander's inquiry, which revealed that several administrative errors existed in Part I of the OER. These were corrected upon Gen. Saint's request. Gen. Saint questioned the propriety of the OER, given the short period of time that the Plaintiff had worked for the senior rater, but he nonetheless concluded that the evaluation complied with Army policy and regulations.

Plaintiff then appealed the OER to the Officer Special Review Board ("OSRB"), requesting that the senior rater portion of the evaluation be deleted. On February 8, 1989, the OSRB denied the appeal, finding that there was no irregularity in the evaluation and that Plaintiff had failed to provide clear and convincing evidence to justify its deletion or amendment.

Plaintiff submitted a second appeal to the OSRB asserting that the evaluation was unjust and illegal for essentially the same reasons given in his first appeal. The OSRB again found that plaintiff had failed to provide any new clear and convincing evidence that would warrant reversal of the decision to deny the initial appeal, in April 1990. Plaintiff applied to the Army Board for Correction of Military Records ("ABCMR") seeking to have the contested OER removed from his official Military Personnel File, promotion to Colonel with back pay, and reinstatement to active duty in the AGR program. The ABCMR denied Plaintiff's request on November 14, 1990. In making its findings, the ABSMR obtained yet a third opinion from the OSRB, which again found that the Plaintiff did not provide clear and convincing evidence to support his contentions. Plaintiff subsequently initiated the present lawsuit alleging that the ABCMR's denial of his application was arbitrary and capricious, unconstitutional, an abuse of discretion, or otherwise not in accordance with law and unsupported by substantial evidence.

II. SUMMARY JUDGMENT

Summary judgment should be granted if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). A disputed material fact is genuine if the evidence is such that a jury could return a verdict for the non-moving party. *Anderson v. Liberty Lobby*, 477 U.S. 242, 248 (1986). The initial burden to demonstrate the absence of a genuine issue concerning

any material fact is on the moving party. *Celotex v. Catrett*, 477 U.S. 317, 325 (1986). This burden can be satisfied by pointing out to the district court that there is an absence of evidence to support an essential element of the non-moving party's case. *Id.* Upon such a showing, the burden shifts to the non-moving party to establish that there is a genuine issue. *Id.* at 324. "[T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at a trial." *Id.* at 322.

III. DISCUSSION

The primary duty of correcting military records, and the review of claims such as Plaintiff's, has been entrusted by Congress to the ABCMR. *Chappell v. Wallace*, 462 U.S. 296, 303 (1983). *See also* 10 U.S.C. § 1552; Appendix B to Defendant's Motion for Summary Judgment ("Appendix B"), Army Regulation ("AR") 15-185. Judicial review of a decision by the ABCMR is narrow. *Geyen v. Marsh*, 782 F.2d 1351, 1352 (5th Cir. 1986). The reviewing court may not set aside a decision of the ABCMR unless that decision is unsupported by substantial evidence, arbitrary, capricious, or contrary to law. *Chappell v. Wallace*, 462 U.S. at 303; *Sanders v. United States*, 594 F.2d 804, 813-14 (Ct. Cl. 1979).

Judicial review of an ABCMR decision is not *de novo*, but rather is limited to the record before the board at the time it rendered its decision. *Geyen*, 782 F.2d at 1352. The

court does not reweigh the evidence, but merely determines whether the conclusion being reviewed is supported by substantial evidence. A narrow inquiry is prescribed as a court cannot substitute its judgment for that of a military department when reasonable minds could reach differing conclusions on the same evidence. *Sanders,* 594 F.2d at 813-14. There is a strong presumption that military officials, including administrative review boards, discharge their duties correctly, lawfully, and in good faith. *Sanders,* 594 F.2d at 813.

While Plaintiff's motion includes numerous instances in which he believes he was wronged, his complaints regarding the ABCMR's decision are as follows:

1) the OER should have been classified as a "referred report," giving Plaintiff an opportunity [sic] respond to its allegations prior to it being placed in his personnel file;

2) the OER was invalid because the senior rater was not qualified; and

3) the various regulations and policies used to deny his appeal were a violation of his equal protection and due process rights.

As to Plaintiff's first two allegations, a review of the summary judgment proof reflects that the ABCMR had the entire record before it in making its decision. These included the reports and investigations conducted during Plaintiff's two appeals to the OSRB, as well as a third investigation by the OSRB at the request of the ABCMR. Included in the information considered were the OER, Plaintiff's application for correction of military records, Plaintiff's military personnel records, the opinions from the OSRB, and the pertinent Army regulations and C.F.R.

sections. While Plaintiff does not agree with the ABCMR's decision, he has not established that the decision was either arbitrary or capricious or not based upon substantial evidence.

The record reflects that Plaintiff's tour of duty continued at Fort Hood until he left for Georgia on May 28. While Plaintiff believes that some earlier date should be considered, the substantial evidence supports the ABCMR's determination that Plaintiff was not separated from his post at Fort Hood until May 28. Additionally, the ABCMR's finding that Col. Richardson was qualified to act as Plaintiff's senior rater was supported by the record. Army regulations require a senior rater to serve in that capacity for a minimum of 60 *calendar* days in order to be qualified to evaluate a rated officer. Appendix B, AR 623-105, ¶ 3-10(b)(1) (emphasis added). Although Plaintiff believes it is not fair for this 60-day period to include that time when the rated officer is not physically at his duty post, this is an insufficient basis to overturn the ABCMR's decision.

Next, the record supports the ABCMR's determination that the OER should not be classified as a referred report. An OER is so classified when it contains ratings or comments that are so derogatory that the report may have an adverse impact on the rated officer's career. Appendix B, AR 623-105, ¶ 4-27. Referral allows the rated officer to acknowledge and comment upon the OER before it is sent to HQDA. Plaintiff asserts that the OER in this case should have been referred because it falls into subsection (e) – "Any report with a potential evaluation in Part Vd of "Do not promote" or narrative comments to that effect from any rating official." Appendix B, AR

623-105, ¶ 4-27(e). Plaintiff contends that the comments by Col. Richardson to the effect that Plaintiff should "continue to serve at that level" is, in effect, the same as stating "do not promote." However, the comments contained in the narrative portion of Plaintiff's OER is a far cry from the derogatory comments included in the case relied upon by Plaintiff. *Muse v. United States*, 21 Cl. Ct. 592 (1990). The rated officer in *Muse* was given "superior" ratings, but the comments sections included such remarks as:

> [H]is performance as trial counsel was erratic. He was frequently criticized for ineffective courtroom performance. He is not a good public speaker and was not always thoroughly prepared in court. . . . He was overly involved in off-duty business activities (real property development and investment) which adversely affected his duty performance.
>
> . . .
>
> He is not articulate in responding to counsel in a forensic environment. He is not comfortable when required to think quickly on his feet. His trial preparation requires further development.

Muse, 21 Cl. Ct. at 606-607. The incompatibility between the foregoing comments and the otherwise "superior" ratings indicated that the raters viewed the rated officer's performance as being "insufficient," thus rendering the officer's evaluation "adverse" under the regulations which would have entitled him to respond and explain all relevant mitigating circumstances. If the officer had been given the opportunity to respond, he might have been able "to persuade the rating officials to amend the OER,

or failing that, to include his own explanation of extenuating/mitigating circumstances that would have ameliorated the negative effect of the OER." *Id.* at 612. The OER in the present case was uniformly good and had no incompatible comments rendering otherwise "superior" ratings "adverse." Plaintiff has failed to establish that the ABCMR's decision that the OER did not require referral was not based upon substantial evidence, or was arbitrary and capricious.

Finally, Plaintiff asserts that he was denied both equal protection and due process. Plaintiff has failed to establish a deprivation of either substantive or procedural due process. As noted by Defendants, Plaintiff has to first identify a protected property interest before claiming a constitutional deprivation. *See Board of Regents of State College v. Roth*, 408 U.S. 562, 569 (1972). A military reserve officer, such as Plaintiff, does not have a constitutional right to a promotion or even to remain on active duty. *Woodward v. Marsh*, 658 F.2d 989, 997-98 (5th Cir. 1981), *cert. denied*, 455 U.S. 1022 (1982); *Sims v. Fox*, 505 F.2d 857, 861-62 (5th Cir. 1974), *cert. denied*, 421 U.S. 1011 (1975). A reserve officer's rights concerning his continued military service, promotions, or the officer evaluation process, are defined by the applicable statutes and Army regulations. *Sims*, 505 F.2d at 861-62. As previously noted, the decisions made in this case fully complied with all applicable statutes and Army regulations, so no procedural due process violation was established. Finally, Plaintiff's allegations regarding an "equal protection" violation are equally lacking. He has failed to identify in what manner he has been deprived of equal protection of the laws. In light of the foregoing, it is

ORDERED that Defendants' Motion for Summary Judgment is **GRANTED** and Plaintiff's Cross-Motion for Summary Judgment is **DENIED.** It is further

ORDERED that any motions not previously ruled upon by the Court are **DENIED.**

SIGNED this 19th day of August, 1997.

/s/ Walter S. Smith, Jr.
WALTER S. SMITH, JR.
United States District Judge

APPENDIX C

MEMORANDUM OF CONSIDERATION
by the
ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

This Appendix has 6 pages (C-1 through C-6)

(LOGO) DEPARTMENT OF THE ARMY
BOARD FOR CORRECTION OF MILITARY RECORDS
WASHINGTON, D.C. 20310-1803

MEMORANDUM OF CONSIDERATION

IN THE CASE OF: STONEBURNER, WILLIAM D.
563-46-1507

BOARD DATE: 14 November 1990
DOCKET NUMBER: AC90-07214

I certify that hereinafter is recorded the record of consideration of the Army Board for Correction of Military Records in the case of the above-named individual. The following members, a quorum, were present:

Mr. Franklin R. Taylor	Chairperson
Mr. Eugene P. Visco	Member
Mr. William E. Manning	Member
Mr. David R. Kinneer	Executive Secretary
Mr. Harry E. Sykes	Examiner

The Board, established pursuant to authority contained in 10 U.S.C. 1552, convened at the call of the Chairperson on the above date. In accordance with Army Regulation 15-185, the application and the available military records pertinent to the corrective action requested were reviewed to determine whether to authorize a formal hearing, recommend that the records be corrected without a formal hearing, or to deny the application without a formal hearing if it is determined that insufficient relevant evidence has been presented to demonstrate the existence of probable material error or injustice.

The applicant requests correction of military records as stated in the application to the Board and as restated herein.

The Board considered the following evidence:

Exhibit A – Application for correction of military records
Exhibit B – Military Personnel Records (including advisory opinion, if any)

APPLICANT REQUESTS: In effect, removal of the officer evaluation report (OER) covering his performance for the period 1 June 1986 through 31 May 1987 from his Official Military Personnel File and promotion to colonel with back pay and reinstatement to active duty in the Active Guard/Reserve (AGR) Program.

APPLICANT STATES: In effect, that the reporting period for the contested OER should have ended between 31 January and 8 March 1987; that the senior rater was not eligible to rate him, and that the report should have been classified as a referred OER. In addition, the applicant contends that he was denied due process and equal protection under the law; therefore, he requested that this Board seek an opinion from the Office of The Judge Advocate General on the issues as stated on his application to this Board.

EVIDENCE OF RECORD: Incorporated herein by reference are military records which show:

The applicant was serving on an AGR tour of active duty as an Operations and Training Staff Officer, Headquarters and Headquarters Company, U.S. Army Garrison, III

Corps, Fort Hood, Texas, when the contested OER was rendered.

On 31 August 1987, the applicant requested that a commander's inquiry (CI) be initiated to correct the errors and injustice which existed in the contested OER. As a result of his request, a CI was conducted and it was revealed that administrative errors did exist in Part I; and steps were taken to correct the errors.

The CI found the senior rater's portion to be legal; however, there was some apprehension as to the fairness of the senior rater's portion since the senior rater was in that position for only 88 days, and the rated officer was in a nonrated status for 53 of those days and absent from observation an additional 12 days. The CI concluded that the administrative errors were not serious enough to invalidate the OER; however, the investigating officer expressed concern of the fairness of the report considering the limited time the senior rater had to evaluate the applicant. It was also concluded that the applicant should have been more diligent and shown more interest in the accuracy of his OER before his reassignment. It was recommended that the Total Army Personnel Command issue guidance related to nonrated time when a senior rater is in the position as stated in Army Regulation 623-105, and that the applicant should be mildly admonished for his part in the processing of the OER. The applicant was provided with a copy of the results of the CI.

Further details of the applicant's military career, the contested OER (COPY ATTACHED), OER record, unsuccessful OER appeal and the rationale for denying his request

are set forth in the case summary provided by the Officer Special Review Board (OSRB) in the Office of the Deputy Chief of Staff for Personnel (COPY ATTACHED).

The facts relating to the applicant's contention that the contested OER should be removed from the records are contained in an opinion (COPY ATTACHED) from the OSRB, which is incorporated herein and need not be reiterated. The OSRB opined that the applicant had failed to submit clear and convincing evidence that would warrant alteration or deletion of the contested OER.

On 2 November 1987, the proponent agency of Army Regulation 623-105 responded to the applicant's request for an interpretation of that portion of the regulation which dealt with nonrated time as it pertains to minimum time served in a position as a senior rater. It was determined that nonrated time accrued by the rated officer does not affect the qualifications or eligibility of the senior rater to provide an evaluation after serving the minimum time in that position.

Under the provisions of Army Regulation 523-105, paragraph 4-27 an OER is classified as a referred report when it contains ratings or comments that are so derogatory that the report may have an adverse impact on the rated officers career. Reports which contain ratings of 4 or 5 in Part IV, a 3 or 4 block rating in Part Vb, a do not promote in Part Vd or any senior rater's potential evaluation in one of the three bottom blocks in Part VIIa.

DISCUSSION: Considering all the evidence, allegations, and information presented by the applicant, together with the evidence of record, applicable law and regulations, and advisory opinion(s), it is concluded:

1. The applicant's contention that the contested OER reporting period should have ended somewhere between 29 January 1987, when he alleges that his replacement arrived, and 8 March 1987, when he was farewelled with his previous senior rater, is not supported by the records which indicate his last duty day was 28 May 1987.

2. Under the provisions of paragraph 4-27, Army Regulation 623-105 the OER does not meet the criteria to be classified as a referred report; therefore, the applicant's contention that the contested OER should have been referred, is without merit.

3. The senior rater met the minimum time in the position as necessary to provide an evaluation of the applicant; therefore, his portion of the contested OER is valid.

4. Since the officer evaluation system is basically an administrative as opposed to legal system, and since the correct administrative procedures were adhered to in processing the contested report, the applicant's contention that he was not given due process is not supported by the records. Likewise, he has provided no rationale to support his request to refer the application to the Office of The Judge Advocate General for a legal interpretation of the regulation relating to the eligibility of the senior rater as promulgated by Army Regulation 623-105.

4. The contested report appears to represent a fair, objective and valid appraisal of his demonstrated performance and potential during the period in question. Therefore, there is no basis for removing it from his Official Military Personnel File.

5. Since there is no basis to grant the portion of his request pertaining to the contested evaluation report, there is likewise no basis to grant the remaining requests.

DETERMINATION: The applicant has failed to submit sufficient relevant evidence to demonstrate the existence of probable error or injustice.

BOARD VOTE:

_____	_____	_____	GRANT_____
_____	_____	_____	GRANT FORMAL HEARING
frt	DV	Jn	DENY APPLICATION

/s/ for_____
David R. Kinneer
Executive Secretary

APPENDIX D

COURT OF APPEALS ORDER DENYING PETITION FOR REHEARING

This Appendix has one page

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-50765

WILLIAM D STONEBURNER, Lieutenant Colonel

Plaintiff-Appellant

v.

SECRETARY OF THE ARMY; ARMY BOARD FOR CORRECTIONS OF MILITARY RECORDS

Defendants-Appellees

Appeal from the United States District Court for the Western District of Texas, Waco

---

ON PETITION FOR REHEARING

(Filed Nov. 6, 1998)

Before DUHÉ, DeMOSS and DENNIS, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above case is [denied].

ENTERED FOR THE COURT:

/s/ John Duhé, Jr.
United States Circuit Judge

REHG-2

CLERK'S NOTE:

SEE FRAP AND LOCAL RULES 41 FOR STAY OF THE MANDATE.

APPENDIX E

CONSTITUTIONAL PROVISIONS AND ARMY REGULATIONS

This Appendix has 2 pages (E-1 through E-2)

The Fifth Amendment to the United States Constitution provides in relevant part:

"No person shall . . . be deprived of life, liberty, or property, without due process of law. . . .

Army Regulation (AR) 623-105 provides in relevant part:

"Para 1-4. Responsibilities

* * * *

e. Commander's of major Army commands (MACOMs) responsibilities are as follows:

(1) Commanders will ensure that –

(a) A copy of this regulation is available to the rated officer and rating officials.

(b) Each rating official is fully qualified to meet his or her responsibilities.

(c) Reports are prepared by the individuals named in the published rating chain.

(d) Rating chains are drawn up by name, given effective dates, published, and distributed to each rated officer and each member of the chain. Any changes to rating chains will also be published and distributed. No changes may be retroactive.

* * * *

(g) Each senior rater (and supplementary reviewer, if any) understands that he or she must examine the entries on the evaluation reports to ensure that objectivity and fairness have been maintained. . . .

* * * *

(i) Referred reports (para 4-27) are provided to the rated officer for acknowledgement or comment before being sent to HQDA (para 5-28). . . .

"Para 3-1. General

* * * *

b. Rating chains will normally consist of the rated officer, the rater, and the senior rater. When a chain is established, the rater and senior rater are the first officials designated.

* * * *

"Para 3-2. The rated officer

* * * *

b. Normally, to be eligible for an evaluation report, a rated officer must complete 90 calendar days in the same position under the same rater. Nonrated periods as described in paragraph 4-10.c(2) are not included in this 90-day period."

"Para 3-10. The senior rater

* * * *

b.(1) To evaluate the rated officer, the senior rater must normally serve in that capacity for a minimum of 60 calendar days. He or she may evaluate the rated officer with less than 60 days as a senior rater if he or she also served as the rated officer's intermediate rater in a previously published chain, and the combined total of time served in the rating chain equals 60 days or more."

APPENDIX F

PERTINENT EXTRACTS FROM ARMY REGULATION (AR) 623-105

This Appendix has 18 pages (F-1 through F-18)

PERTINENT EXTRACTS OF AR 623-105

Para 1-1. Purpose

a. This regulation sets policies and procedures for the Officer Evaluation Reporting System (OERS). It gives instructions for preparing, processing, and using DA Form 67-8 (U.S. Army Officer Evaluation Report (OER), DA Form 67-8-1, (U.S. Army Officer Evaluation Support Form) and DA Form 67-8-2 (Senior Rater Profile Report). . . . .

Para 1-4. Responsibilities

e. Commanders of major Army commands (MACOMs) responsibilities are as follows:

(1) Commanders will ensure that –

(a) A copy of this regulation is available to the rated officer and rating officials.

(b) Each rating official is fully qualified to meet his or her responsibilities.

(c) Reports are prepared by the individuals named in the published rating chain.

(d) Rating chains are drawn up by name, given effective dates, published, and distributed to each rated officer and each member of the chain. Any changes to rating chains will also be published and distributed. No changes may be retroactive. . . .

(f) Each rating official knows how the subordinates he or she evaluates have performed.

(g) Each senior rater (and supplementary reviewer, if any) understands that he or she must examine the entries on the evaluation reports to ensure that objectivity and fairness have been maintained. When doing so, he or she must keep in mind the interests of both the Army and the rated officer. The senior rater must also understand that if he or she notes discrepancies, the senior rater will be sure that corrections are made. . . .

(i) Referred reports (para 4-27) are provided to the rated officer for acknowledgment or comment before being sent to HQDA (para 5-28). . . .

1-5 U.S. Army Officer Evaluation System (OES)

a. The OES identifies officers who are best qualified for promotion and assignment to positions of higher responsibility. It also identifies officers who should be kept on active duty, those who should be retained in grade, and those who should be eliminated.

b. Under the OES, an officer is evaluated on his or her performance and potential. In this system, three kinds of evaluations are given –

(1) *Duty evaluations.* The OER is used for these evaluations.

(2) *School evaluations.* The Academic Evaluation System is used for these evaluations.

(3) *DA Evaluations.* Selection boards and personnel management systems are used for these evaluations. Duty and school evaluations are single time-and-place evaluations and are used to make DA evaluations. DA evaluations cover an officer's entire career.

c. DA evaluations focus on an officer's potential. They are judgments on the officer's ability to perform at higher grades, and they are also made to judge whether an officer should be retained and given greater responsibility in his or her present grade. In making DA evaluations, three factors are considered –

(1) *Army requirements for officers.* The needs of the Army for officers frequently change. At times, the Army has a need for officers with certain backgrounds, experience, and expertise. The size of the Army officer corps is also determined by law in terms of strength by grade. Army needs limit the number of selections and assignments that can be made. Thus, an officer's potential is partially determined by how he or she compares with his or her peers.

(2) *Duty performance.* Performance of duty is an extremely important factor in determining an officer's potential. Duty performance is judged by how well an officer performs his or her tasks and how well he or she meets officer corps professional values.

(3) *Officer qualifications.* This is the third factor in determining an officer's potential. It must be considered in order to meet Army needs for outstanding leaders of troops and technical units, supporting staff managers, and technical specialties. One consideration in determining qualifications is the different skills and backgrounds required by different specialists. Another consideration is an officer's progress through specialist fields to positions of greater responsibility. In addition, his or her length of service and civil and military schooling are considered.

Para 1-6. Officer Evaluation Reporting System (OERS)

. . . .

c. The primary function of the OERS is to provide information to DA for use in making personnel management decisions. This information is supplied to DA by a rating chain in the officer's assigned organization.

(1) The information provided on the OER, combined with the Army's needs and individual officer qualifications, is used as a basis for personnel actions. Included are promotion, elimination, retention in grade, retention on active duty, reduction in force, command selection, school selection, assignment, specialty designations and RA integration.

(2) To ensure that sound personnel management decisions can be made and that an officer's potential can be fully developed, evaluation reports must be as accurate and complete as the situation allows. Each report must be a comprehensive appraisal of an officer's abilities, weaknesses, and potential. Reports that are either incomplete or fail to provide a realistic and objective evaluation make it difficult to determine an officer's true potential.

Chapter 2
The Evaluation Reporting Process

2-1. General

. . . .

b. In the evaluation process, DA Form 67-8 and DA Form 67-8-1 are used by the organizational rating chain. In addition, DA Form 67-8-2 is used by DA to track the rating history of the senior rater (chp 4).

. . . .

2-4. The end of the rating period

. . . .

d. The senior rater (para 3-10) provides an independent evaluation of the rated officer's potential on the DA Form 67-8. In most cases, the senior rater also provides the final chain-of-command review. To meet these responsibilities, the senior rater uses the information provided on the DA Form 67-8 and DA Form 67-8-1, as well as any information he or she gets through direct or indirect contact with the rated officer and other members of the rating chain.

. . . .

Chapter 3
The Rating Chain

3-1. General

a. Rating chains must correspond as nearly as practical to the chain of command and supervision within an organization, regardless of component or geographical location.

(1) A rating chain is established to provide the best evaluation of an officer's performance and potential. A rating chain also ties the rated officer's performance to a specific senior-subordinate relationship. This allows for the proper counseling to develop the rated officer and accomplish the mission. These purposes are best achieved within an organization's chain of command.

(2) The evaluation of officers by persons not involved with their supervision is inappropriate.

b. Rating chains will normally consist of the rated officer, the rater, and the senior rater. When a chain is established, the rater and senior rater are the first officials designated. . . .

Section I
Members of the Rating Chain

3-2. The rated officer

a. The rated officer is the subject of the evaluation. He or she has considerable responsibility in the evaluation process.

b. Normally, to be eligible for an evaluation report, a rated officer must complete 90 calendar days in the same position under the same rater. Nonrated periods as described in paragraph 4-10c(2) are not included in this 90-day period. . . .

3-10. The senior rater

a. The senior rater is the senior rating official in the rating chain. The senior rater uses his or her position and experience to evaluate the rated officer from a broad organizational perspective. His or her evaluation is the link between the day-to-day observation of the rated officer's performance by the rater and intermediate rater and the longer term evaluation of the rated officer's potential by DA selection boards.

b. In addition to evaluating the rated officer, the senior rater normally performs the final rating-chain review.

(1) To evaluate the rated officer, the senior rater must normally serve in that capacity for a minimum of 60 calendar days. He or she may evaluate the rated officer with less than 60 days as a senior rater if he or she also served as the rated officer's intermediate rater in a previously published chain, and the combined total of time served in the rating chain equals 60 days or more.

(2) There is no minimum time-in-position requirement governing the senior rater's review function. He or she will perform that function regardless of the amount of time he or she has been in the position.

. . . .

3-12. Responsibilities of the senior rater

The senior rater will –

a. Use all reasonable means to become familiar with the rated officer's performance. When practical, the following means should be used:

(1) Personal contact.

(2) Records and reports.

(3) The rater's and intermediate rater's evaluations of the rated officer given on DA Form 67-8.

(4) The information given by the rated officer and the rater and intermediate rater on DA Form 67-8-1.

b. Assess the ability of the rated officer. This involves placing his or her performance in perspective by considering –

(1) The rated officer's experience.

(2) The relative risk associated with the performance.

(3) The difficulty of the organization's mission.

(4) The adequacy of resources.

(5) The overall efficiency of the organization.

c. Ensure that rating officials counsel the rated officer throughout the rating period on meeting his or her objectives and complying with the professional standards of the officer corps.

d. Consider the information on the DA Form 67-8-1 when evaluating the rated officer.

e. Evaluating the rated officer's potential relative to his or her contemporaries, as described in paragraph 4-16.

f. Ensure that all reports both the senior rater and his or her subordinates write are complete and provide a realistic evaluation.

. . . .

Section II
Evaluation Reviews and Commander Inquiries
3-13. Required reviews

a. In most cases, the senior rater will accomplish the final rating chain review. The reviewing official's responsibilities are listed in paragraph 3-14. . . .

. . . .

3-14. Review responsibilities

a. All reviewing officials will ensure that –

(1) The rating chains are correct.

(2) The evaluations rendered by rating officials are examined and discrepancies are clarified or resolved.

(3) All members of the rating chain have complied with this regulation.

. . . .

Chapter 4
Evaluation Principles, Forms, and Procedures

4-1. General

a. This chapter discusses the principles and procedures to be used in evaluating an officer and the forms used to record the evaluation.

b. There are three forms used in the evaluation process: DA Form 67-8, DA Form 67-8-1, and DA Form 67-8-2. DA Form 67-8 is used by the rating chain to evaluate the rated officer. DA Form 67-8-1 is used to assist in this evaluation, to assist in the professional development of the rated officer, and to support the accomplishment of the organization's mission. DA Form 67-8-2 is used by HQDA to track the senior rater's rating history. . . .

Section I
Evaluation Principles

4-2. Role of the rating official

The specific responsibilities of rating officials are described in chapter 3, and detailed instructions for completing evaluations are set forth in section II through V of this chapter. Outlined below are the general principles that apply to the role of rating officials in the evaluation process.

a. Rating officials greatly affect a rated officer's performance and professional development. Thus, these officials must ensure that the rated officer thoroughly understands the organization, its mission, his or her role in support of the mission, and all of the standards by which his or her performance will be judged.

b. To render an objective evaluation, rating officials must use all opportunities to observe and gather information on the rated officer's performance (chap 3).

c. Rating officials must prepare reports which are accurate and as complete as possible within the space limitations of the form. This responsibility is vital to the long-range success of the Army's mission. With due regard for the officer's current grade, experience, and military schooling, evaluations should cover failures as well as achievements. However, evaluations will normally not be based on a few isolated minor incidents.

d. Rating officials have a responsibility to balance their obligations to the rated officer with their obligations to the Army. Rating officials must make honest and fair evaluations of the officers under their supervision. On the one hand, this evaluation must give full credit to the

rated officer for his or her achievements and potential. On the other hand, rating officials are obligated to the Army to be discriminating in their evaluations so that DA selection boards and career managers can make intelligent decisions.

4-3. Performance and potential evaluations

Procedures for completing evaluations of performance and potential are set forth in sections II through V of this chapter. Outlined below are the general principles to be used when making evaluations.

a. Performance evaluations are judgments on how well the rated officer met his or her duty requirements and adhered to the professional standards of the officer corps. That is, performance is evaluated by considering the results achieved, how they were achieved, and how well the officer complied with professional values.

(1) "Results achieved" consist of the degree to which the rated officer fulfills the duties and objectives that are assigned to him or her or implied by the duty position. Due regard is given to –

(a) The efforts made by the rated officer.

(b) The results that could reasonably be expected given the time and resources available.

(2) "How results are achieved" consists of –

(a) The means used by the rated officer to reach his or her objectives.

(b) His or her use of available resources (e.g., personnel, equipment, money, and time).

(3) How well the rated officer complied with professional values is assessed by comparing his or her professional ethics and competence with the standards that apply to all officers.

b. Evaluations of potential are assessments of the rated officer's ability, compared with that of his or her contemporaries, to perform in positions of greater responsibility in higher grades. . . .

. . . .

4-7. Rater's responsibilities

. . . .

b. The rater will identify the rated officer's complete rating chain at the beginning of the rating period. The rater will notify the rated officer of changes to the rating chain. The rater will use the rating chain described at paragraph 1-4e(l)(c) as the primary reference.

. . . .

Section III
DA Form 67-8

. . . .

4-10. Part 1, Administrative Data

. . . .

c. The following is an explanation for use in computing the evaluation period, nonrated periods, and the number of rated months.

. . . .

(2) Nonrated periods are determined by the status of the rated officer. . . .

(c) Periods totaling 30 or more consecutive days that occur during the rating period and that are spent in one or more of the following ways:

1 On leave.
2 AWOL.
3 In the hospital.
4 In confinement.
5 Under arrest.
6 On permissive temporary duty (TDY).
7 On TDY or special duty (SD) serving as a member of a DA Selection board or a court-martial.
8 On TDY or SD attending a course of instructions scheduled for less than 60 calendar days.

9 Attendance at Combined Arms Service and Staff School (CAS3).

. . . .

(3) To determine if the rated officer has the number of days needed for a report, determine the rating period. That is, count the number of calendar days the rated officer has served under his or her present rater in his or her present duty position since the beginning of the rating period. Deduct from this total all nonrated periods of the type described in (2)(c) above. Do not count nonrated periods that occurred prior to the rating period. If the resulting number of days is equal to or greater than the minimum number of days needed for a report, a report may be submitted.

. . . .

4-11. Part II, Authentication

. . . .

c. Detailed instructions for this part are as follows:

. . . .

(5) Each rating official signs and dates the report before sending it to the next rating official or HQDA. Their signatures verify all entries on the form at the time of their respective signatures. The date entered will not be prior to the "Thru" date or the date of the rated officer's or any preceding rating official's signature. . . .

4-14. Part V, Performance and Potential Evaluation (Rater)

. . . .

c. Detailed instructions for this part are as follows:

. . . .

(5) *Block e.* Completed by rater. The rater amplifies his or her potential evaluation (para 4-3); his or her comments are mandatory. Comments need not be limited to discussion of promotion potential; they may focus on any aspect of what ought to happen to the rated officer in the future, such as assignments and education. . . .

4-16. Part VII, Senior Rater

a. Part VII of the DA Form 67-8 provides for an evaluation of potential by the senior rating official. . . .

d. Detailed instructions for this part are as follows:

. . . .

(2) *Block b.* The senior rater enters comments in this block. In most cases, these will address the potential evaluation. However, they may address performance, the administrative review, or the evaluations by the rater and the intermediate rater. . . . If the senior rater's evaluation is based on infrequent observation of the rated officer, he or she may note this fact on his or her comments.

(3) *Comments mandatory.* Comments by the senior rater are mandatory. Simply stating concurrence with the rater's or intermediate rater's evaluation does not fulfill the intent of this paragraph. . . .

Section IV
Restrictions Applying to DA Form 67-8

4-17. Each Report must stand alone

a. Each report will be an independent evaluation of the rated officer for a specific rating period. It will not refer to prior or subsequent reports. It will not remark on performance or incidents occurring before or after the rating period.

4-27. Referred reports

The following types of reports will be referred to the rated officer by the senior rater for acknowledgment and comment before they are sent to HQDA.

. . . .

a. A relief for cause report submitted under the provisions of paragraph 5-18.

b. Any report with negative remarks about the rated officer's professional ethics in Part IVb, and/or in rating official's narrative evaluation(s).

c. Any report with a rating of 4 or 5 in any of the 14 attributes in Part IVa.

d. Any report resulting in a performance evaluation of "Often failed requirements" or "Usually failed requirements", in Part Vb.

e. Any report with a potential evaluation in Part Vd of "Do not promote" or narrative comments to that effect from any rating official.

f. Any report with a potential evaluation of Part Vd of "Other," where the required explanation has derogatory information.

g. Any report with a senior rater potential evaluation in one of the bottom three blocks in Part VIIa.

h. Any report with rating or comments that, in the opinion of the senior rater, are so derogatory that the report may have an adverse impact on the rated officer's career.

i. Any report with an entry of "FAIL" in Part IVa, item 3, indicating noncompliance with AR 350-15; or an entry of "NO" in Part IVa, item 12, indicating noncompliance with AR 600-9.

. . . .

Section V
DA Form 67-8-2

4-30. Purpose and use

The DA Form 67-8-2 –

a. Tracks the rating history of each senior rater and makes this information available to both the senior rater and DA (paras 3-2c and d, 4-10d(2), and 4-16d(5)).

b. Emphasizes the importance of the senior rater's responsibilities to provide credible information to DA. This is one of the senior rater's most important responsibilities. It affects the Army's future leadership and has great impact on how the Army accomplishes its missions.

c. Is prepared annually on each senior rater who has served as a senior rater for at least five different officers.

. . . .

5-18. Relief for cause

a. A report is required when an officer is relieved for cause regardless of the rating period involved. Relief for cause is defined as an early release of an officer from a specific duty or assignment directed by superior authority and based on a decision that the officer has failed in his or her performance of duty. In this regard, duty performance consists of the completion of assigned tasks in a competent manner and compliance at all times with the accepted professional officer standards shown in Part IV, DA Form 67-8. These standards apply to conduct both on and off duty. If, for whatever reasons, the relief does not occur on the date the officer is removed from his or her duty position responsibilities, the period of time

between the removal and the relief will be nonrated time included in the period of the relief report. The report will be rendered by the published rating chain at the time of the relief; no other report will be due during this nonrated period.

. . . .

APPENDIX G

THE CONTESTED OFFICER EVALUATION REPORT (OER)

This Appendix has seven pages (G-1 through G-7)

SEE PRIVACY ACT STATEMENT ON DA FORM 67 - 1 FILE CMPF 7216PREO

For use of this form see AR 623 105 proponent agency is US Army Military Personnel Center

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PART I – ADMINISTRATIVE DATA

a. LAST NAME FIRST NAME MIDDLE INITIAL
STONEBURNER, WILLIAM D.

b. SSN 563-46-1507

c. GRADE LTC

d. DATE OF RANK Year 85 Month 04 Day 08

e. BR AG

f. DESIGNATED SPECIALTIES 54

g. FMOS (*WO*)

h. STA CODE 48396

i. UNIT, ORGANIZATION, STATION, ZIP CODE OR APO MAJOR COMMAND

HHC, III CORPS FT. HOOD, TX 76544

ATCH: ARPERCEN
FORSCOM

j. REASON FOR SUBMISSION 05 ANNUAL 9s L

k. COMD CODE FC5

l. PERIOD COVERED FROM Year 86 Month 06 Day 01
THRU Year 87 Month 05 Day 31

m. NO OF MONTHS 12

n. MILPO CODE FS16

o. RATED OFFICER COPY (*Check one and date*)

[ ] 1 GIVEN TO OFFICER _____

[X] 2 FORWARDED TO OFFICER _____

p. FORWARDING ADDRESS

q. EXPLANATION OF NONRATED PERIODS

PART II – AUTHENTICATION (*Rated officer signature verifies PART I data and RATING OFFICIALS ONLY*)

a. NAME OF RATER (*Last, First, MI*)

ENGLISH, RONALD W.

SSN 465-66-3355

SIGNATURE /s/ Ronald W. English

GRADE, BRANCH, ORGANIZATION, DUTY ASSIGNMENT

LTC, OD, HHC USAG, CH, PLANS, TRAINING, AND EVAL

DATE 16 June 87

b. NAME OF INTERMEDIATE RATER (*Last, First, MI*)

SSN

SIGNATURE

GRADE, BRANCH, ORGANIZATION, DUTY ASSIGNMENT

DATE

c. NAME OF SENIOR RATER (*Last, First, MI*)

RICHARDSON, LAWRENCE C.

SSN 505-42-1572

SIGNATURE /s/ Lawrence C. Richardson

GRADE, BRANCH, ORGANIZATION, DUTY ASSIGNMENT

COL, AR, HHC, USAG, DIR, RES COMP SUPPORT

DATE 30 Jun 87

d. SIGNATURE OF RATED OFFICER

/s/ William D. Stoneburner

DATE 2 JUNE 87

e. DATE ENTERED ON DA FORM 21

f. RATED OFFICER MPO INITIALS Jn

g. SR MPO INITIALS

h. NO. OF INCL. 0

PART III – DUTY DESCRIPTION (*Rated*)

a. PRINCIPAL DUTY TITLE OPERATIONS & TRAINING STAFF OFFICER

b. SSI/MOS 54A00

c. REFER TO PART IIIa. DA FORM 67-8-1

Responsible for development and coordination of plans associated with annual training site selection and evaluation for Reserve Component units during current and subsequent training years. Develops RC training windows for units attending AT at Fort Hood to ensure maximum utilization of Fort Hood facilities during AT periods. Develops and publishes installation AT and evaluation circulars. Assists MUSARCs, TAGs, and individual RC units in formulation of current and out-year training plans, programs, and changes thereto. Functions as III Corps representative to CONUSA on expansion and changes to the RC Partnership, Affiliation and Roundout

programs. Prepares DRCS input to III Corps Semi-Annual Training and other briefings.

PART IV – PERFORMANCE EVALUATION – PROFESSIONALISM (*Rated*)

a. PROFESSIONAL COMPETENCE

(*In Items 1 through 14 below indicate the degree of agreement with the following statements as being descriptive of the rated officer. Any comments will be reflected in b. below*)

HIGH DEGREE LOW DEGREE
<---------->
1 2 3 4 5

1. Possesses capacity to acquire knowledge grasp concepts [1]
2. Demonstrates appropriate knowledge and expertise in assigned tasks [1]
3. Maintains appropriate level of physical fitness PASS 8704 [1]
4. Motivates, challenges and develops subordinates [1]
5. Performs under physical and mental stress [1]
6. Encourages candor and frankness in subordinates [1]
7. Clear and concise in written communication [1]
8. Displays sound judgment [1]
9. Seeks self-improvement [1]
10. Is adaptable to changing situations [1]
11. Sets and enforces high standards [1]
12. Possesses military bearing and appearance 70/178 YES [1]
13. Supports EO-EEO [1]
14. Clear and concise in oral communication [1]

b. PROFESSIONAL ETHICS (*Comment on any area where the rated officer is particularly outstanding or needs improvement*)

LTC Stoneburner is competent in his duties and professionally ethical.

1. DEDICATION
2. RESPONSIBILITY
3. LOYALTY
4. DISCIPLINE
5. INTEGRITY
6. MORAL COURAGE
7. SELFLESSNESS
8. MORAL STANDARDS

Excl. 3

PERIOD COVERED 860601-870531

PART V – PERFORMANCE AND POTENTIAL EVALUATION (*Rated*)

a. RATED OFFICERS NAME STONEBURNER, WILLIAM D.

SSN 563-46-1507

RATED OFFICER IS ASSIGNED IN ONE OF HIS HER DESIGNATED SPECIALITIES MOS [X] YES [ ] NO

b. PERFORMANCE DURING THIS RATING PERIOD REFER TO PART III DA FORM 67-8 AND PART III a. b. AND c. DA FORM 67-8-1

[X] ALWAYS EXCEEDED REQUIREMENTS

[ ] USUALLY EXCEEDED REQUIREMENTS

[ ] MET REQUIREMENTS

[ ] OFTEN FAILED REQUIREMENTS

[ ] USUALLY FAILED REQUIREMENTS

c. COMMENT ON SPECIFIC ASPECTS OF THE PERFORMANCE REFER TO PART III, DA FORM 67-8 AND PART III a. b. AND c. DA FORM 67-8-1. DO NOT USE FOR COMMENTS ON POTENTIAL.

LTC Stoneburner has performed his duties as Operations and Training Officer in an exemplary manner. He has demonstrated through job performance to be a good planner, coordinator and staff officer. Through his coordination efforts, annual training was established for 273 Reserve Component units at Fort Hood. Although much of this training was conducted subsequent to the rating period, the planning efforts by LTC Stoneburner during the rating period were the driving force behind the successes enjoyed by the Reserve Components. LTC Stoneburner is a fine U.S. Army Reserve officer and has demonstrated his ability to serve on active duty with the competence to make a professional contribution.

d. THIS OFFICER'S POTENTIAL FOR PROMOTION TO THE NEXT HIGHER GRADE IS

[ ] PROMOTE AHEAD OF CONTEMPORARIES

[X] PROMOTE WITH CONTEMPORARIES

[ ] DO NOT PROMOTE

[ ] OTHER (*Explain below*)

e. COMMENT ON POTENTIAL

LTC Stoneburner should be continued in the U.S. Army Reserve as an Individual Ready Reservist when he reaches his mandatory release from active duty in June 1990.

PART VI – INTERMEDIATE RATER

f. COMMENTS

PART VII – SENIOR RATER

a. POTENTIAL EVALUATION (*See Chapter 4, AR 623-105*)

SR	CMC 5C3	
____	RC: LTC	000
____	STONE	000
____	563461507	002
____	SR: CCL	000
X	RICHA	001*
____	505421572	
____	DATE 870730	000
____		000
____	101 800715	000
____	RATED 003	000

A COMPLETED DA FORM 67-8-1 WAS RECEIVED WITH THIS REPORT AND CONSIDERED IN MY EVALUATION AND REVIEW

[X] YES [ ] NO (*Explain in b*)

b. COMMENTS

Fully concur with the rater's comments. During my observation of LTC Stoneburner's performance he has demonstrated a very capable ability to plan, schedule, and coordinate Reserve Component training. He is a good staff officer and consistently meets the standards of Lieutenant Colonel on active duty and should continue to serve at that level on a higher headquarters staff where he can make significant contributions to the mobilization and training readiness of Reserve Component units.

APPENDIX H

COMMANDER'S INQUIRY REPORT AND COMPUTATION OF RATING PERIOD EXHIBIT

This Appendix has eight pages (H-1 through H-8)

DEPARTMENT OF THE ARMY
HEADQUARTERS 13TH SUPPORT
COMMAND (CORPS)
FORT HOOD, TEXAS 76544

[SEAL] REPLY TO
ATTENTION OF

AFVG-DCO

MEMORANDUM FOR: LTG SAINT, COMMANDER III CORPS & FORT HOOD, FORT HOOD, TEXAS 76544-5000

SUBJECT: Report of Commander's Inquiry

1. Pursuant to appointment orders, (TAB A) I Have conducted an informal investigation into the Officer Efficiency Report (OER) submitted on LTC William D. Stoneburner, QM, 563-46-1507, for the period 1 June 1986 to [May 31, 1987]. The inquiry was conducted through in person and telephonic interviews in accordance with the provisions of paragraph 5-30, AR 623-105.

2. The basis of this inquiry is a letter from LTC Stoneburner, dated 31 August 1987, claiming data errors in Part I of the report and insufficient period of observation by the senior rater. I have circled the contested items in red on the OER (TAB C) and correlated my findings to pertinent paragraphs of AR 623-105 and the circled data points. Exhibits of TAB D substantiate the findings.

3. Findings:

a. There are administrative data errors in Part I of the report. Specifically:

(1) Block E. Branch should read QM. Event took place after shall sent to rater. See exhibit 1.

(2) Block I. Unit should read HHC, USAG. See exhibit 2.

(3) Block J. Should read 04 PCS. Departed post 29 May. See exhibit 3.

(4) Block L. Ending date should read 870528. (para 4-10d(11)) Departed PCS 29 May 87. See exhibit 3 & 4.

(5) Block M. Rated months should read 9. See exhibit 4 para d.

(6) Block O. Forwarded to officer should be checked and date 15 July 87 entered. See comment in (7) below.

(7) Block P. Should read Box 157, Senoia, GA 30276-0157. MILPO (AG-COMPACT) knew LTC Stonburner had departed, but did not have his forwarding address. The original OER was marked forwarded to officer, but not dated since the officer's copy was sent to Directorate of Reserve Component on 15 July 87 for forwarding. DRC had the forwarding address on file and forwarded the copy to LTC Stoneburner around 20 July 87. These facts were confirmed with MAJ Lucus, ARPERCEN, AV 693-9505; Ms. Lewis, AG-COMPACT, 287-2439; SP4 McMurry, HQ Command PAC, 287-2005; and Ms. Privatt, DRC, 287-6300.

(8) Block Q. Should read. 37 days school TDY, 31 Jan – 8 Mar 87; 30 days leave, 25 Mar – 23 Apr 87; 16 days school TDY, 09 – 24 May 87. See exhibit 4.

b. Identification of Rating Chain was not accomplished in accordance with para 1-5a(4) or 4-7b of AR 623-105.

(1) Rating schemes were prepared monthly at DRC (see exhibit 5), but were not distributed to each officer. There should have been a change published on 2 March 87, after COL Richardson became the Director, (see exhibit 6) but it was not published until 1 April 87. The only distribution was to AG Compact. I confirmed this practice with COL Richardson, LTC Bedell, LTC (Ret) English (698-2943), LTC Stoneburner (572-2326), MAJ Mann, and the civilian secretaries, Ms. Privatt and Ms. Anderson at DRC. Since the office is small and the rating chain rarely changes, personnel were told who their rating officials were upon inprocessing.

(2) When the Director changed, it seemed logical that everyone would expect a change in rating officials. Unfortunately, LTC Stoneburner did not expect a change. He was on orders (exhibit 7) to Korea, with a report date of 4 May 87, and assumed he would be closed out and senior rated by COL Woodward or that the new Director, COL Richardson would have insufficient time in position to rate him. Based upon the belief of an OER in April 87, LTC Stoneburner states that he prepared a Support Form, with COL Woodward as Senior Rater, and gave it to LTC English his rater, before departing on TDY in February. LTC English confirmed that he had the Support Form a long time, but could not recall if it was before the Director change or if there was ever any discussion regarding who would do the senior rating. No copy of the Support Form could be found by any of the officers involved or by the admin personnel. An OER shell did not accompany the Support Form.

c. Authentication of Administrative data was not accomplished in accordance with paragraph 4-11c(3). An

annual report notice and OER shell was generated by AG Compact on 22 April 87. Only one copy was prepared and I was able to track the shell to DRC. SP4 Barnett hand carried the document from HQ Command PAC on 24 April 87. There is no audit trail of the OER Shell after 24 April 87. Normal procedure is to give it to the rater. With the Director change, retirement of LTC English, and the rotation of reservists through DRC, there were several reports in action and the specifics of each cannot be recalled by the personnel at DRC. It is a common practice to request signed copies of departing officers in case typing errors are made. No one can confirm or deny that LTC Stoneburner reviewed the administrative data. According to LTC Stoneburner signed copies of a blank OER were requested by Ms. Nina Anderson, now at Medical Records, Darnall Hospital 288-8160. Ms. Anderson does not remember specifically the call as it was a common occurrence to get signed copies from the many reservists rotating through the office. LTC Stoneburner stated he did not question the need for the copies nor did he ask about the data that would be placed on the OER.

d. Part VII of the report is legal, but the fairness of the rating is questionable.

(1) COL Richardson assumed duties as Director, Reserve Components on 2 March 87 (see exhibit 6). Even though the rating chain was not published until 1 April, the organizational structure is such that the Director historically senior rates the action officers. He met the 60 day in position requirement of para 3-10b(1); 4-16d(3); 5-22; and 5-27b. All officers knew the Director would be their Senior Rater.

(2) The non rated periods are used only to establish that the rated officer is eligible for a report; that is, has 90 days of rated time in a position under the same rater. Applicable paragraphs of the regulation are 3-2b; 4-10c(2); 5-1b and 5-2. There is no indication that non rated days are to be subtracted from the rating officials time in position to establish their eligibility to render a rating. I confirmed that interpretation with LTC Hess of Policy and Evaluation Branch, MILPERCEN; 221-9610. LTC Stoneburner has requested an opinion from MILPERCEN. (See exhibit 8.)

(3) During the 88 days (2 Mar – 28 May 87) COL Richardson was the senior rater of record, LTC Stoneburner had 53 days of non rated TDY and leave time. (See exhibit 4). LTC Stoneburner was absent an additional 12 days on leave and permissive TDY which were rated time for a total of 65 days away from observation. Whether 23 days is sufficient to assess ability and become familiar with performance is questionable.

(4) LTC Stoneburner's departure date was unclear at the time of the Director change (2 Mar 87). COL Woodward (464-6915) did not consider a Senior Rater option.

4. Conclusion:

a. Failure to adhere to the provisions of AR 623-105 with regard to rating scheme and processing of an OER by experienced, senior officers has resulted in several administrative errors in LTC Stoneburner's report. The most serious errors are the non rated time, ending date,

type of report, and branch. None of the errors invalidate the report.

b. Technically the senior rater was properly designated and qualified to perform the rating as the regulation is currently written. The impact of non rated time in those cases where rating officials barely meet the minimum time in position is a policy question that needs clarification to ensure fair and just reports.

c. Given the scenario of this report period, a senior rater option by COL Woodward would have been more appropriate and fair to LTC Stoneburner. In the interest of fairness COL Richardson could have disqualified himself. As a minimum, he could have qualified his rating as one based on little personal contact and opportunity to assess performance and place potential in perspective.

d. Clearly LTC Stoneburner should have been more diligent and interested in his own report to have ensured its accuracy particularly under the circumstances.

5. Recommendatons:

a. Send the letter at TAB E forwarding results of inquiry to ARPERCEN as required by para 5-30c(4) and 7-2e.

b. Send letter at TAB F recommending that MILPERCEN issue guidance on how to treat non rated time during the minimum time in position for rating officials.

c. Provide LTC Stoneburner results of the inquiry report using letter at TAB G.

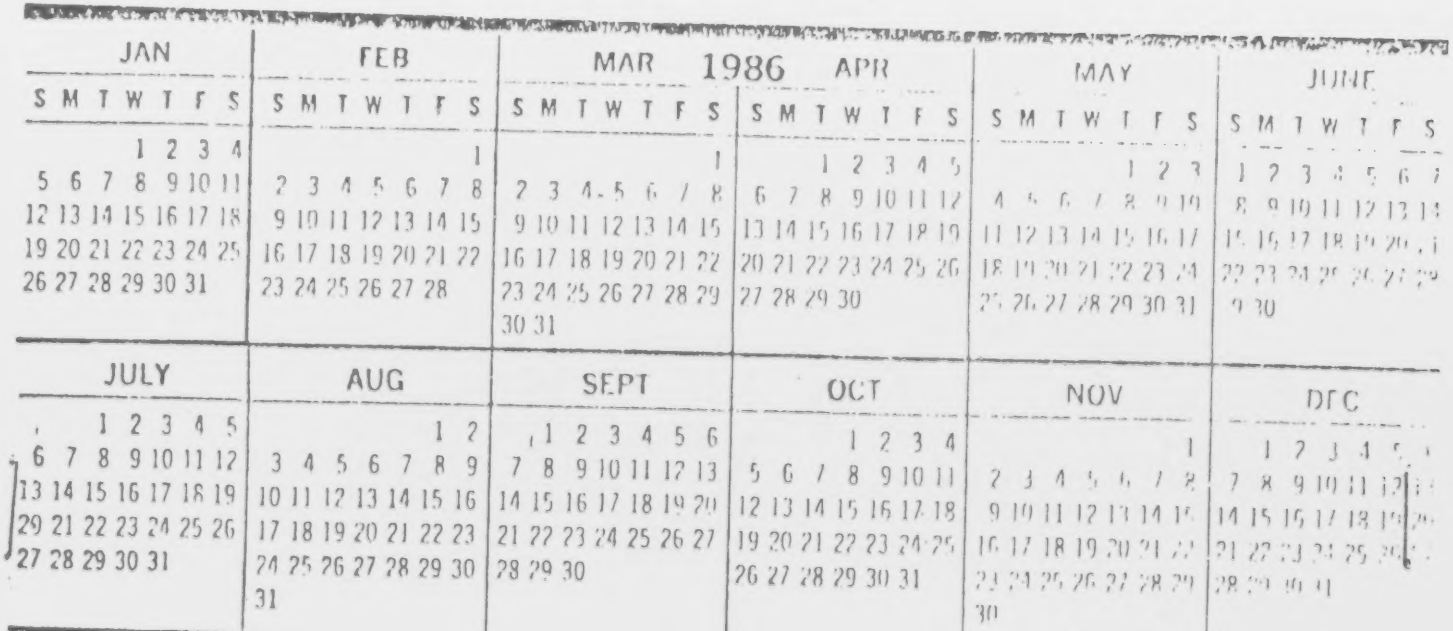
/s/ Rowland G. Steele
ROWLAND G. STEELE
Colonel, FA

7 Encls
1. TAB A Appointment Orders
2. TAB B Ltr, Request for Inquiry
3. TAB C Highlighted OER
4. TAB D Substantiating Document-8 exhibits
5. TAB E Ltr to ARPERCEN
6. TAB F Ltr to MILPERCEN
7. TAB G Ltr to LTC Stoneburner

COMPUTATION OF RATING PERIOD

a. Reference: Paragraph 4-10c; Table 5-1; and Figure 4-1 of AR 623-105

b. Period covered: 1 June 86 thru 28 May 87. 362 days



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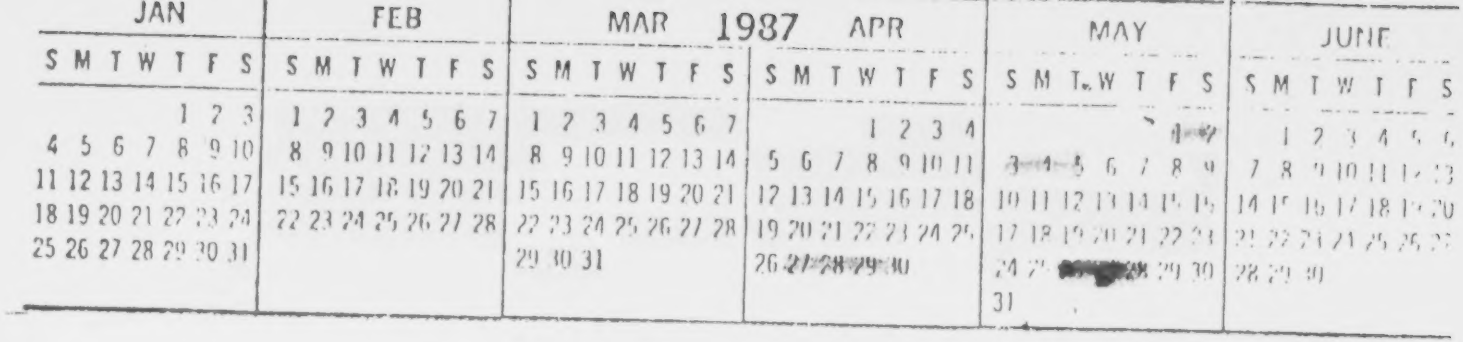

c. Non Rated Period: 83 days (block Q of report)

(1) 31 Jan - 8 Mar 87	37 days	TDY, attending course of instruction less than 60 days - no academic report. Para 4-10c(2)(c)(8) AR 623-105. See Encl 1 for orders. 2 days added for travel.
(2) 25 Mar - 23 Apr 87	30 days	Leave, 30 consecutive days - para 4-10c(2)(c)(1). See Encl 2 for orders
(3) 9 May - 24 May 87	16 days	TDY, same explanation (1). See Encl 3 for orders.

d. Rated days: 279 or 9 months (Block M of report). 362-83 divided by 30 equals 9 months and 9 days. Para 4-10c(3) & (4).

(R, II, 299)

TAR D Exhibit 4

APPENDIX I

FIRST APPEAL TO THE OFFICER SPECIAL REVIEW BOARD (OSRB)

This Appendix has nine pages (I-1 through I-9)

CASE SUMMARY

RATED: 08 FEB 1989

STONEBURNER, WILLIAM D.
(LAST NAME, FIRST NAME, MI)

Personal Data:

Rank: LTC Branch of Service: QM

SSAN: 563-46-1507 Component: USAR

Basic Date of Appointment:

Highest Level of Civil Education: JD (CEL 1)

Highest Level of Military Education: CGSC (MEL 4)

Significant Technical Military Training: CGSC
(e.g. Abn, Avn, Maint Crs, Instr Crs.)

Awards* MH__ DSC__ DDSM__ DSM__ SS__ DSSM__
IM__ DFC__ SM__ BSM__ DMSM__ MSM__
AM__ JSCM__ ARCOM__ AAM 1 PH__
GCM 1

* Indicate number of awards.

APPEAL DATA:

1. Date of Appeal: 9 FEB 88

2. Date appeal forwarded to OPMD: 16 AUG 88 DIV: ARPERCEN

3. Date Division Comments forwarded to OSRB: 16 AUG 88

recommending: NOTHING

4. This is the 1st appeal of OER rendered for this period: 1 JUN 86 – 31 MAY 87

5. The contested OER is attached.

6. **RATING SCHEME:**

(1) a. Appellant Rank LTC Duty Position Duty
OPERATIONS & TRAINING STAFF

b. Rater Rank LTC Duty Position
CH, PLANS, TRNG & EVAL

c. Indorser/
Int Rtr Rank Duty Position Action

d. Reviewer/
Sr Rtr Rank COL Duty Position
RES. COMP SUPPORT DIV.

(2) a. Appellant Rank Duty Position Days/
Months

b. Rater Rank Duty Position

c. Indorser/
Int Rtr Rank Duty Position Action

d. Reviewer/
Sr Rtr Rank Duty Position Action

(3) a. Appellant Rank Duty Position Days/
Months

b. Rater Rank Duty Position

c. Indorser/
Int Rtr Rank Duty Position Action

d. Reviewer/
Sr Rtr Rank Duty Position Action

7. **BASIS OF THE APPEAL IS:**

_ Inaccurate/unjust evaluation.

_ Rating does not accurately reflect performance.

X Violates intent of para 3-4b, 4-10b, 4-10c, AR 623-105, dated 1 Feb 88

_ Others:

8. **INDEX OF SUBSTANTIATING EVIDENCE PROVIDED:**

a. Tranmittal Ltr. HQ ARPERCEN, 16 Aug 88; CPT Taylor

b. Appeal Memo, Self-authored, 9 Feb 88

c. Memo, LTG Saint, Subject: Commander's Inquiry Report, 17 Nov 87

d. Ltr to Whom it May Concern, dtd 15 Dec 87, LTC Bedell

e. Ltr to Whom it May Concern, dtd 13 Jan 88, LTC Coachys

f. Ltr to Whom it May Concern, dtd 5 Feb 88, MAJ Mann

g. Chronology Marked Exhibit D, MAJ Mann's Report/ LTC Stoneburner Dpts

h. Travel Order 1-277 Ft. Hood, 35 Days Proceed A/O 31 Jan 87

i. PCS Order Assign SR to Ft Hood, Rpt Date 15 Mar 87

j. DA Form 31, Leave Appellant 25 Mar - 23 Apr 87

k. LES, Appellant, LV 10 Days Apr 87

l. LES, Appellant, LV 40 Days May 87

m. Permissive TDY Approval 8 Days, 27 Apr – 5 May 87

n. TDY Order #3-167, 14 Days Proceed O/A 10 May 87

o. DA 31 LV Command 29 May PCS

p. Ltr Dtd 2 Nov 87, to Appellant, Fm Chief Evals, Subject: Interpretation of the Provisions of AR 623-105

FILE DATA.

1. Promotion or Retention Status: APPROVED BY JAN 88 RETENTION BOARD FOR AGR

2. Appellant's Evaluation Report Summary:

   a. 67-4:

   b. 67-5: AER; 119.2; 157.2; NR; 203.2; NR; 189.1

   c. 67-6: 4/4, 80/78; 3/4, 85/85; 3/3, 90/91; 2/3, 90/91;

   NOTE: Indicate Part VII by 1/1, 2/2, 1/2, etc. and Part XII by 90/91, 97/98, etc.

   d. 67-7: 125; 153; 180; 163(166); 173; AER; 188; 190; 196; 188; 200; AER; 200;

   e. 67-8: I/II/NSR; AER; I/I/Top3/1/2/0; I/I/Top2/2/4/4;

   I/I/Top2/2/5/4; I/II/Top2/0/0/1; I/I/Top2/2/3/3;

   I/II/Top2/0/0/0; I/II/Top2/0/1/0; I/II/5/2/0/0*; CI

NOTE: Example – II/II/Top3/10/14/27 – 1st two entries (II/II) derived from Parts Vb and Vd, ranked numerically with I being top block. 3d, 4th, 5th and 6th

entries derived from Part VIIa where "Top3" entry represents the appellant's placement with respect to distribution program (Top, Top2, Top3, 4 thru 8, and bottom); 4th entry is number rated above appellant; 5th entry is number rated equal and 6th entry is number rated below as taken from SR's profile.

NOTE: The evaluation report summary is only a general indication of performance and potential. Voting board members on an appeal must review the entire performance record for full understanding and assessment.

COMMENTS AS APPROPRIATE:

*Contested OER

STONEBURNER, WILLIAM D., LTC, 563-46-1507, AG

DISCUSSION:

1. This is the first appeal of an annual OER for the period 1 June 86 – 31 May 87. It was rendered while the appellant was serving as an Operations & Training Staff Officer, HHC, USAG, Dir, Res. Comp. Support, III Corps, Ft. Hood, TX. The report was not referred.

2. In Part IVa the rater awarded all "1's" and commented that the appellant is competent in his duties and professionally ethical. In Part Vb the rater marked "Always exceeded requirements" and commented that the appellant performed his duties as Operations and Training Officer in an exemplary manner. His other remarks are favorable. In Part Vd he marked "Promote with contemporaries" and commented that the appellant should be continued in the US Army Reserve as an Individual Ready Reservist when he reaches his mandatory

release from activate duty in Jun 90. The Senior Rater (SR) marked block 5 against a profile of 2/0/0 and commented that he fully concurred with the rater's comments. His other comments are positive and he noted that the appellant was a good staff officer and consistently met the standards of a lieutenant colonel on active duty and should continue to serve at that level.

3. The appellant bases his appeal on his contention that the report is illegal since the senior rater did not serve in that capacity for at least 60 calendar days of rated time. He further contends that the senior rater had insufficient time to properly assess his long term evaluation potential by DA Selection Boards. The appellant requests that the SR portion of the OER be deleted.

4. The appellant provides his memorandum for Commander, ARPERCEN explaining his appeal. He explains that the SR and he were in the office together for 16 days, although both were assigned to their respective positions between 2 Mar 87 – 28 May 87, 88 calendar days. He explains that his mission during the period was to interface with his replacement and assist him in the assumption of his planning responsibilities. The rater, he notes, consistently ignored him through either inadvertent neglect or design and failed to task him during the 16 days he was in the office. Thus, there was no opportunity for the SR to become familiar with his thinking on staff actions on the conclusions/recommendations reached in such actions. The appellant devotes most of his appeal toward what he considered inconsistent, arbitrary and contradictory language in AR 623-105. He believes nonrated periods used to determine minimum time requirements should be the same for both rater and SR. He

believes that the interpretation made by the Chief, Evaluation Systems Officer, PERSCOM was made solely for matters of convenience to expedite the overall OER process and limit grounds for appeal of senior rater comments. He further believes that interpretation is unconstitutional as it violates the due process and equal protection clauses thereto. The appellant provides a 17 Nov 87 memorandum from the CG, III Corps, Ft. Hood who relates that he had a Commander's Inquiry conducted, found administrative errors (listed on the appellant's OMPF) and determined the SR's evaluation to be not illegal, but that the fairness of the evaluation is questionable. LTC Bedall provided a support statement and indicated that he worked the desk closest to the appellant and that the appellant, to his knowledge, was not tasked to do any staff work from 9 Mar – 29 May 87. LTC Coachys provides a statement generally to the same [effect]. MAJ Mann provides a statement attesting to the appellant's handover to him and that the transition was almost effortless. The appellant provides various documentation reflecting his absence from the office due to leave, holidays, and TDY.

5. *Senior Rater (SR).* The OSRB contacted the Senior Rater on 23 Jan 89. He was informed of the Appellant's contentions and a need for further information. The SR was further advised that a paraphrased summary of his comments would be included in the overall Case Summary and therefore would be releasable to the Appellant under the Freedom of Information Act/Privacy Act (FOIA/PA). The SR agreed to its release. A paraphrased summary follows: The SR recalled the contested report. He remembered the CI as having been conducted by a

COL Steele. He did not refute having little time to observe the appellant but felt he had no option but to write the report. He rated the appellant based on some observations and review of his work. He noted that the SR portion of the OER [dealt] with potential and judged the appellant as belonging in the middle of the SR Potential Evaluation. He knew that the block check placed the appellant at the low end of his personal SR profile and felt that appropriate. He noted that he kept an unofficial record of where he rates officers and is aware of his profile. He was of the opinion that the regulation (AR 623-105) allowed no option. He would have preferred to have the previous SR exercise the Senior Rater Option, but as he didn't, he felt his report was fair, accurate and objective. The rater of the report has since retired. The SR did not know if the appellant was still in the AGR program. The SR was provided a paraphrased summary of the information gleaned from the conversation and had no objection to its release UP FOIA/PA.

6. The appellant has based his appeal on his interpretation of AR 623-105. He believes the intent of AR 623-105 is to have the SR serve in that capacity for at least 60 calendar days which are rated time. To do otherwise, he believes, is to insufficiently assess an officer's long-term potential. As an enclosure to the appeal, the appellant provides a 2 Nov 87 interpretation of the issue by the Chief, Evaluations Systems Officer, PERSCOM. He received that determination as a result of the CI conducted by III Corps who used it as a source document for the 17 Nov 87 memorandum to TAPA from the CG III Corps. The additional evidence provided by the appellant consists of statements from three fellow officer co-

workers and a chronology of events during the SR's tenure. The OSRB contacted the SR and confirmed the circumstances and time factors stated in the appeal. The Board notes that the appellant accepted the rating officials as correct when he authenticated part IId of the contested report. The SR was well aware of the provisions of AR 623-105, and knew where he had placed the appellant in his SR profile in his judgment of the appellant's potential. The appellant has failed to provide any evidence to support his contentions except to say he considers the provisions of AR 623-105 as interpreted by TAPA to be a violation of due process and equal protection clauses of the constitution and made solely for the convenience of those administering the OER system. The appellant forgets that the applicable policy is written by DA, and therefore the DA interpretation of that policy is the only valid one. The OSRB finds no basis for making an exception to the regulatory policy and opines that the presumption of regularity, as specified in Para 5-32, AR 623-105 applies to the contested report.

CONCLUSION:

The appellant failed to provide clear and convincing evidence required by paragraph 9-7, AR 623-105 to justify deletion or amendment of the report.

RECOMMENDATIONS:

a. Deny the appeal.

b. Place the appeal correspondence in the appellant's "R" fiche.

3. Have ARPERCEN Branch make administrative corrections as noted in II Corps CI, if they are, in fact, valid.

APPENDIX J

SECOND APPEAL TO THE OFFICER SPECIAL REVIEW BOARD (OSRB)

This Appendix has twelve pages (J-1 through J-12)

ADDENDUM TO CASE SUMMARY DATED
8 February 1989

SUBJECT OFFICER: *Stoneburner, William D., LTC, QM, 563-46-1507*

ON APPEAL OF OER COVERING THE PERIOD:
1 Jun 86 – 31 May 87

BACKGROUND:

1. This is the second appeal of the OER for the period 1 Jun 86 to 31 May 87, 12 rated months, while the appellant was assigned as Operations and Training Staff officer, Directorate for Reserve Component Support (DRCS), HQ III Corps, FT Hood, TX. In the first appeal, the OSRB decided that the evidence submitted did not support the appellant's contention that the OER is illegal since the senior rater (SR) did not serve in that capacity for at least 60 calendar days of rated time. The appellant failed to provide any evidence to support his contention except to say that he considers the provisions of AR 623-105, as interpreted by TAPA, to be in violation of due process and equal protection clauses of the Constitution and were made solely for the convenience of those administering the OER system. The appeal was denied on 8 Feb 89.

2. The appellant has received three OERs since adjudication of the first appeal, profiled as I/I/Top2/0/3/8, I/I/Top2/1/6/0 and I/I/Top/0/1/10.

DISCUSSION:

1. In his current appeal, the appellant continues to maintain that the contested OER is unjust. He requests that:

a. Items "a" and "b" of Part VII be deleted

b. Items "d" and "e" of Part V "be blanked out since these entries contradict one another and create ambiguity for any board reviewing this OER. The appellant notes "The former states 'promote with contemporaries' while the latter states continue as a (sic) LTC in the IRR beyond my mandatory removal date." (The Board notes that the comments in Part Vd actually read "(The appellant) should be continued in the U.S. Army Reserve as an Individual Ready Reservist when he reaches his mandatory release from active duty in June 1990." There is no indication that the appellant continue as a *LTC* in the IRR, as alleged by the appellant.)

2. In adjudication of this case, the OSRB reviewed the first appeal case summary, the appellant's second appeal memorandum, and a third party statement of support from the FORSCOM J-5, the appellant's current supervisor.

3. The appellant identifies the following time table which accounts for his activities during the last four and one-half months of the rating period:

12 Jan 87 –	Major Mann (appellant's replacement) reports for duty
31 Jan 87 –	Major Mann assumes AT planning responsibilities
2 Feb – 6 Mar 87 –	Appellant attends 35 days TDY in preparation for his next assignment

2 Mar 87 –	Colonel Richardson replaces Colonel Woodward as SR
9 Mar 87 –	Appellant returns to office from TDY.
9 Mar 87 –	Hail and Farewell (Colonel Richardson and Major Mann hailed; Colonel Woodward and appellant farewelled)
25 Mar – 24 Apr 87 –	Appellant on leave
27 Apr – 5 May 87 –	Appellant permissive TDY to Atlanta to look for housing
11 – 22 May 87 –	Appellant TDY to Joint Planning Course, MacDill AFB, FL
25 May 87 –	Memorial Day
26 – 28 May 87 –	Appellant on leave
29 May 87 –	Appellant enters PCS leave and travel status
1 Jun 87 –	Appellant reports for duty at FT McPherson

The appellant indicates his mission was to interface with Major Mann and assist him in the assumption of the planning responsibilities in the DRCS. He and Major Mann worked closely together from 12 through 28 Jan 87 at which time Major Mann had a firm grasp of the duties. The appellant also indicates that after his return from TDY in Mar 87, he checked with Major Mann to see if he

needed assistance. Each time, Major Mann said he had everything under control.

4. In his current appeal, the appellant continues to claim that the SR portion of the contested OER was illegal. He makes this claim by incorporating his first appeal and indicating "it is set forth in full in this second appeal." He bases his appeal on the contention that the TAPA interpretation of AR 623-105, violates the due process and equal protection clauses of the Constitution and it is an injustice and violates the concept of fairness built into the OER process, since the SR did not have an adequate opportunity to evaluate the long-term potential of the appellant. He indicates that he had very little access to the SR. The SR arrived approximately 2 Mar 87, while the appellant was TDY. From the time of his return from TDY on 9 Mar 87 until his PCS to HQ FORSCOM 29 May 87, the total time the appellant was in the office was 16 days. The other days were leaves, weekends, a holiday, permissive TDY and TDY. The appellant also states he believed that the previous SR directed a Senior Rater Option, effective 28 Jan 87, or a closeout report effective in Mar 87. He also contends that he was never advised by the rater of the change in SRs. The OSRB, in adjudicating the first appeal, noted that the appellant accepted the rating officials as correct when he authenticated Part IId of the contested OER. The appellant's response in his second appeal was that after arrival at his next assignment he signed and dated five blank copies of DA Form 67-8 at the request of a secretary at the III Corps DRCS. He indicates that this is routine DRCS procedure for USAR officers departing FT Hood, prior to the completion of an

OER, especially for that particular rater. He also maintains that no support form was prepared for the new SR (the Board notes that no support was required to be prepared or modified for a new SR); that in its discussion with the SR in adjudicating the first appeal, the OSRB failed to query the SR to list or cite one or two examples of observations or the specific work the SR observed and discussed in the contested OER; and that the Board made no attempt to contact the appellant to discuss the SR's remarks to the Board. The appellant also states that the SR never held an entrance or exit interview with him, the SR never tasked him, and the longest conversation they had was about one minute at the coffee table. Regarding the SR's words in the contested OER, "During my observation of (the appellant's) performance he has demonstrated a very capable ability to plan, schedule, and coordinate Reserve Component training," the appellant states he was not involved in any taskings to plan, schedule or coordinate 1988 annual training, nor was he involved in any taskings concerning RC unit mobilization and training readiness during the time the SR was Director of III Corps DRCS. (The Board notes that the SR did not address a particular year in the contested OER.) The appellant indicates that the award of the MSM for the period 17 Jul 83 to 1 Mar 87 further substantiated his impression that he would receive a closeout report or a senior rater option. Also, the award was for service and service awards are not normally awarded until the closeout of a period of assignment. The appellant also contends that the OSRB portrayal of LTC Coachys' statement omits the fact that the rater (on approximately 9 Mar 87) assigned the appellant's work area to LTC Coachys, since

the appellant would not be spending much time in the office prior to his next assignment. He also contends that the contested OER should have been referred, thus allowing him the opportunity to request a Commander's Inquiry before the OER left FT Hood. Regarding the rater, the appellant indicates that he was consistently ignored by the rater through either inadvertent neglect or design and the rate failed to task him during the 16 days. Thus, he maintains the SR had no opportunity to become familiar with his thinking or logical development of a staff action or the conclusions/recommendations reached in such actions. He said he requested the rater to give him work, but he received no taskings while he was in the office in Mar 87. The rater did task him in May 87 to do two projects, which the appellant indicates he completed and had ready for final typing.

5. The Board deemed it necessary to contact the rater and recontact the SR.

a. The Board contacted the rater on 16 Jan 90. The rater was informed of the appellant's contentions, a need for additional information, that a paraphrased summary of the comments would be included in the Case Summary, and that this document is subject to release to the appellant under the Privacy Act or Freedom of Information Act (PA/FOIA). The rater agreed to its release. A paraphrased summary of the comments follows: The rater said that the appellant's performance over the last five to six months of the rating period had deteriorated significantly. The rater said "He quit on us. He developed a bad attitude, did not want to come to work and, when he did, his appearance did not represent what was expected of a field grade officer." There were numerous times that he

was absent from his place of duty with no explanation to the chain of command as to his whereabouts. The rater indicated that he made it very clear to the appellant on several occasions that Major Mann had certain duties and the appellant had other duties until the appellant left PCS to his new assignment. The rater had directed the appellant to continue work on the Annual Training (AT) plan until his PCS. The appellant agreed, but did not follow through on many of the taskings and any work the appellant turned in as complete was of poor quality and needed to be redone. The rater recalled that he had given the appellant several taskings regarding logistics support for "Starburst" – the 49th Armored Division's AT at FT Hood. There were problems which were directly attributable to the appellant's lack of coordination. He said that the appellant's comment that he was not involved in any taskings to plan, schedule or coordinate 1988 AT nor was he involved in any taskings concerning RC unit mobilization and training readiness during the time the SR was Director of III, Corps DRCS was false. The rater indicated that the planning for ATs actually began 18 months out. The rater counselled the appellant on more than one occasion that his (the appellant's) performance had deteriorated – finally advising him that he needed to get his act together or he would see it in writing. The rater stands firmly behind his rating. He stated that the appellant's performance had so deteriorated during the rating period that he felt that the appellant had reached his potential as a LTC and in no way should he be a full colonel. If the OER got his attention and he was doing better in his new job, then that is good, but it does not change his impression of the appellant's performance nor

his rating. The rater said that during the commander's inquiry he was questioned if he had prepared the SR's comments on the contested OER or provided input to the OER. The rater said that he provided no input, verbal or otherwise, to the SR for the OER and was never queried for input by the SR. The rater said that the SR had ample evidence of the appellant's performance from Mar – May 87 to form his own opinion. Regarding the MSM award, the rater indicated that the previous SR directed the award be completed before he left in Mar 87. The rater stated that he personally prepared the award based on the appellant's previous performance. He couldn't recall if the end date of the MSM (I Mar 87) was due to the previous SR's departure in Mar 87 or the appellant's PCS to Korea about that same time, or both. (The appellant had previously been slated for assignment to Korea which was subsequently changed to FT McPherson.) Regarding the statement by LTC Coachys that he had been assigned the appellant's work area, the rater said that he did not recall the details. "Possibly LTC Coachys sat at his desk, but there was more than adequate work space in the DRCS for (the appellant) to continue his work." The rater was provided a paraphrased summary of the information gleaned from the conversation and had no objection to its release UP FOIA/PA.

b. The OSRB again contacted the SR on 18 Jan 90. He was informed of the appellant's contentions, a need for additional information, that a paraphrased summary of the comments would be included in the Case Summary, and that this document is subject to release to the appellant under the PA/FOIA. The SR agreed to its

release. A paraphrased summary of the comments follows: The SR stated that the DRCS was a small organization and there was no question that the SR had replaced, and taken over the duties of, the previous SR. The SR indicated that he did have limited access to the appellant because the appellant was primarily on leave/TDY from the time the SR arrived until the appellant departed PCS. Since the regulation required him to provide a senior rating of the appellant, he based much of his impression of the appellant's performance and potential on comments from the previous SR during their two week overlap when the SR "sized-up" the appellant and the other personnel of the DRCS. He was also aware, from normal course of business with the rater during the rating period, that the rater considered the appellant's performance "less than acceptable." He considered the rater to be a solid officer and he respected his judgment. He could not recall any specific examples of the appellant's work as discussed in the contested OER, but pointed out that the OER is now over two and one half years old. He said he normally uses the DA Form 67-8-1 in preparing OERs and had no reason to believe that he did not use it in this case. The SR said that he personally prepared his own OER comments, was not impressed with the appellant, did not see him as having potential for promotion to full colonel and rated him accordingly. The SR was provided a paraphrased summary of the information gleaned from the conversation and had no objection to its release UP FOIA/PA.

c. The OSRB contacted the previous SR on 18 Jan 90. He was advised of the appellant's contentions regarding a closeout or a Senior Rater option OER, and was asked

about the inclusive dates on the MSM. He was further advised that a paraphrased summary of his comments would be included in the overall Case Summary and therefore would be releasable to the appellant under the FOIA/PA. He agreed to its release. A paraphrased summary follows: The previous SR said that the appellant had initially been selected for another assignment (to Korea) with an earlier reporting date. That assignment fell through. By that time, the MSM had been prepared. Regarding the appellant's contention that he thought he would receive a closeout or Senior Rater Option OER, the SR indicated that be never told that to the appellant or gave him that impression. However, the appellant would have correctly assumed he would have been senior rated by the previous SR if he (the appellant) had departed PCS before the PCS of the SR in Mar 87. However, the appellant's orders were changed with a later reporting date and thus an OER was not prepared before the SR departed. The previous SR was provided a paraphrased summary of the information gleaned from the conversation and had no objection to its release UP FOIA/PA.

6. The OSRB will not address the appellant's claim that AR 623-105 violates the Constitution. The Officer Efficiency Report System, as described in AR 623-105, is an administrative, not a legal system. Accordingly, this appeal must be decided by the Board based on administrative procedures of the regulation, as applied to the contested OER. The Board refers to para 3-10.b.(1), AR 623-105 which states "To evaluate the rated officer, the senior rater must normally serve in that capacity for a minimum of 60 calendar days . . . " Also para 3-12.a. indicates the senior rater will use all reasonable means to

become familiar with the rated officer's performance to include, where practical, personal contact, records and reports, rater's and intermediate rater's evaluations of the rated officer, and information given by the rated officer, the rater and the intermediate rater on DA Form 67-8-1. The SR, served in his capacity for more than 60 days and used most, if not all, of the means listed above to prepare his portion of the contested OER. Accordingly, the Board opines that although the SR's access to the appellant during the rating period was limited, the SR had adequate information on which to prepare his portion of the contested OER. The appellant has not provided convincing evidence to show otherwise. Regarding the appellant's claim of contradiction between the rater's block check in Part V d ("Promote With Contemporaries") and the comments in Part V e ("(The appellant) should be continued in the U.S. Army Reserve as an Individual Ready Reservist when he reaches his mandatory release from active duty in June 1990), the OSRB finds that the comments and the block check are neither contradictory nor ambiguous. The Board further opines that the evidence presented and the information obtained shows clearly that the appellant was given the benefit of any doubt in the contested OER. The rater indicated the appellant's performance deteriorated during the rated period, his attitude was poor, he failed to come to work and when he did his appearance was not up to the standards of a field grade officer. The SR said he was not impressed with the appellant, saw no potential for promotion to full colonel, and rated him accordingly. The Memorandum from the FORSCOM J-5, while supportive of the appellant, does not provide information regarding

the appellant's performance during the rating period, nor does it offset the OSRB's responsibility to adjudicate this appeal IAW AR 623-105. The Board finds that the contested OER was prepared IAW the provisions of AR 623-105. There is no evidence to indicate that the ratings by both the rater and SR were other than a fair and just appraisal of the appellant's performance and potential. The provision of regularity, as discussed in para 5-32, AR 623-105 must apply to this case.

CONCLUSION:

The appellant has failed to provide any new clear and convincing evidence that warrants reversal of the OSRB's decision to deny the initial appeal.

RECOMMENDATION:

1. Deny the appeal.

2. File appeal correspondence on the appellant's "R" fiche.

APPENDIX K

STATEMENT OF
LIEUTENANT COLONEL (LTC) COACHYS

This Appendix has one page (K-1)

January 13, 1988

TO WHOM IT MAY CONCERN:

I served in the Directorate of Reserve Component Support (DRCS) at Ft. Hood, Texas during the period 9 March-26 June, 1987 as an Individual Ready Reservist on a 110 day ADT Tour as the DARRT Program Coordinator. My assigned working area was the cubicle and desk previously occupied by LTC William D. Stoneburner.

When I reported for duty 9 March, LTC Stoneburner had just returned from TDY where he had been at school in preparation for his next assignment at FORSCOM. I was assigned LTC Stoneburner's working area by the DRCS Deputy Director, LTC Ronald W. English. He told me to consider this my permanent work area because LTC Stoneburner would not be spending much time in the office but he would be taking leave, [permissive] TDY in Atlanta and TDY for additional schooling for his next assignment.

To the best of my knowledge from my start date of 9 March, 1987 until he departed on 29 May, 1987, LTC Stoneburner's total time in the office probably did not exceed 10 days. When in the office his time was spent making final preparations for his next assignment at FORSCOM, writing a research project for the first year writing requirement for the Air War College correspondence program, or in clearing post at Fort Hood.

/s/ Richard M. Coachys
RICHARD M. COACHYS
LTC IN USAR
721-12-4472

APPENDIX L

OFFICER SPECIAL REVIEW BOARD ADVISORY OPINION

This Appendix has three pages (L-1 to L-3)

DAPE-MPC-S (SFMR-AI/14 May 90) (623-105) 1st End
COL Brayboy/54121
SUBJECT: Advisory – STONEBURNER, William D., LTC, 563-46-1507, QM

HQDA (DAPE-MPC-S), 200 Stovall Street, Alexandria, VA 22332-2600 20 JUN 1990

FOR DA Military Review Boards Agency, 2nd Floor, 1941 Jefferson Davis Highway, Arlington, VA 22202-4508

1. Per your request and under the auspices of the ODCSPER, the Officer Special Review Board (OSRB) has reviewed the application of LTC William D. Stoneburner. On 8 February 89 and 29 January 90, the OSRB denied two appeals for the contested OER. The specific rationale, supporting the denial of the appeals, is contained in the attached OSRB case summary dated 8 Feb 89, and the addendum to the case summary dated 8 Feb 79. The OSRB reviewed the ABCMR application, prior appeals and associated documentation and concluded that the appellant failed to provide clear and convincing evidence required by paragraph 9-7, AR 623-105 to justify deletion or amendment of the report.

2. In this ABCMR application, the appellant provided the following contentions which are essentially the same as those in the two earlier appeals which were denied by the OSRB: (1) SR did not serve at least 60 days which qualified as rated time by appellant, (2) the contested OER should have been referred to the appellant as an adverse report, (3) the chain of command should have ended the reporting between the end of Jan 1987 and 8 Mar 1987, (4) it was an error to designate a SR for the period 9 Mar 1987 through 31 May 1987 and that it

should have been non-rated time, (5) inconsistency between rater OER input and comments provided to OSRB during second appeal, (6) violation of due process due to failure to indicate correct unit of assignment on contested OER, and (7) denial of equal protection under the constitution. The appellant requests that entire contested OER be deleted, or delete Parts V c., d, and e, and VII a, and b., or delete Part VII a, and b. Appellant also requests promotion to Colonel with 900407 date of rank and all associated back entitlements, plus accrued leave and interest at legal rate. Finally, he requests that he be reinstated in the AGR program and continue to serve on active duty, if he is not 55 years old upon promotion to colonel. The appellant also provided essentially the same evidence provided in prior appeals.

3. The review of the ABCMR application also considered all contentions and evidence and concluded that the appellant did not provide clear and convincing evidence to support his contentions. Specifically, it determined that, although the appellant had extensive absences during the period Jan 87 through 8 Mar 87, his place and duty assignment did not change, and therefore rating officials did not [err] in rendering a rating using the published rating scheme. The appellant contends that the OER should have been referred. However, the OER does not meet referral requirements of para 4-27, AR 623-1053, nor does it qualify for referral based on appellant's contention that the rater implied that he should be retired as a LTC, when rater stated in the contested OER that appellant, " . . . should be continued in the USAR as an Individual Ready Reservist when he reaches his mandatory release from active duty in June 1990." The appellant

reserved action on the constitutional issues involving due process and equal protection (not appropriate for OSRB adjudication) pending outcome of his ABCMR application. Alleged inconsistences between the rater's comments on the contested OER and comments he made to the OSRB, during the earlier appeal were also unfounded.

4. In summary, the OSRB considered all available evidence submitted by the appellant, considered the previous case summaries, and found no basis to change its prior decision. The ABCMR is reminded that the enclosed Case Summary and Addendum are integral to the advisory opinions expressed above. Accordingly, it is recommended that the application be denied in its entirety.

FOR THE DEPUTY CHIEF OF STAFF FOR PERSONNEL:

/s/ J.R. Puel, COL, QM
for RALPH A. UDICK
Colonel, FA
President, DCSPER Officer
Officer Special Review Board

2 Encl
nc
added 2 encls
as

APPENDIX M

OER RATING SCHEME FOR MARCH 1987 AND APRIL 1987

This Appendix has two pages (M-1 to M-2)

DEPARTMENT OF THE ARMY
HEADQUARTERS III CORPS AND FORT HOOD
FORT HOOD, TEXAS 76544-50

[SEAL] REPLY TO
ATTENTION OF

AFZF-RC

1 March 1987

SUBJECT: OER RATING SCHEME

POC: SGM Rogers, 287-4548

DIRECTORATE OF RESERVE COMPONENT SUPPORT

Rated Officer	Rater	Interm Rater	Senior Rater
COL James K. Woodward 455-56-2105/840801 AR/12/54 Dir, Res Comp Supp/54	COL Clyde W. Glosson 223-42-6987 Garrison Cdr	BG William A. Fitzgerald, Jr. Chief of Staff	MG John M. Brown Deputy Commander
COL Lawrence Richardson 505-42-1572 AR/12/54 Dir, Res Comp Supp/54	COL Clyde W. Glosson 223-42-6987	BG William A. Fitzgerald, Jr.	MG John M. Brown
LTC Ronald W. English	COL James K. Woodward	None	COL Clyde W. Glosson

M-1

465-66-3355/801213 OD/91 Ch, Training Div/54A			
LTC James K. Bedell 430-64-6101/840528 EN/21 Indiv Tng Off/54A	LTC Ronald W. English	None	COL Woodward
LTC William D. Stoneburner 563-46-1507/850408 AG/42 Opns & Tng Off/54A	LTC Ronald W. English	None	COL Woodward
MAJ James P. Mann 444-40-4513/870111 IN/42 Opns & Tng Off/54A	LTC Ronald W. English	None	COL Woodward
CPT Lawrence O. Gale 527-23-0203/850501 AR/12 Opns Off/54A	GS 12 Robert F. Trudo	None	COL Woodward

/s/ James K. Woodward
JAMES K. WOODWARD
Colonel, GS
Director, Reserve Component Support

DEPARTMENT OF THE ARMY
HEADQUARTERS III CORPS AND FORT HOOD
FORT HOOD, TEXAS 76544-50

[SEAL] REPLY TO
ATTENTION OF

AFZF-RC

1 April 1987

SUBJECT: OER RATING SCHEME

POC: SGM Rogers, 287-4548

DIRECTORATE OF RESERVE COMPONENT SUPPORT

Rated Officer	Rater	Interm Rater	Senior Rater
COL Lawrence C. Richardson	COL Clyde W. Glosson	BG William A. Fitzgerald, Jr.	MG John M. Brown
505-42-1572	223-42-6987	114-28-1292	428-40-4703
AR/12/54	TC/92	BG, USA	MG, USA
Dir. Res Comp Supp/54	Garrison Commander	Chief of Staff	Deputy Commander
LTC Ronald W. English	COL Lawrence C. Richardson	None	COL Clyde W. Glosson
465-66-3353/801213			
OD/91			

M-2

Ch. Training Div/54A			
LTC James K. Bedell 430-64-6101/840528 EN/21 Indiv Tng Off/54A	LTC Ronald W. English	None	COL Richardson
LTC William D. Stoneburner 563-46-1507/850408 AG/42 Opns & Tng Off/54A	LTC Ronald W. English	None	COL Richardson
MAJ James P. Mann 444-40-4513/870111 IN/42 Opns & Tng Off/54A	LTC Ronald W. English	None	COL Richardson
CPT Lawrence O. Gale 527-23-0203/850501 AR/12 Opns Off/54A	GS 12 Robert F. Trudo	None	COL Richardson

/s/ Lawrence C. Richardson
LAWRENCE C. RICHARDSON
Colonel, AR
Director, Reserve Component Support

APPENDIX N

GENERAL SAINT'S REQUEST FOR POLICY CLARIFICATION AND DEPARTMENT OF THE ARMY'S RESPONSE TO GENERAL SAINT'S REQUEST FOR POLICY CLARIFICATION

This Appendix has three pages (N-1 through N-3)

N-1

DEPARTMENT OF THE ARMY
HEADQUARTERS III CORPS AND FORT HOOD
FORT HOOD, TEXAS 76544-5056

[SEAL] REPLY TO
ATTENTION OF

AFZF-CG

17 November 1987

MEMORANDUM FOR: Major General Donald W. Jones, Commander, United States Total Army Personnel Agency, Alexandria, Virginia 22332-0400

SUBJECT: Request for Policy Clarification

1. Attached for your review is a Commander's Inquiry Report I directed on a situation that questions the current policy on establishing rating official qualification. The crux of the matter is how we treat non rated time during the minimum time in position for intermediate or senior raters, hereafter referred to as senior rater.

2. Current policy in chapters 3-5 of AR 623-105 only requires the senior raters to have 60 days in position in order to rate. The regulation is unclear as to whether that time was intended to be rated time as in the case of the rater. Under current guidance we can have senior ratings where the rated officers have the majority of the time under a new senior rater as non rated time, particularly if the rating chain changed near the end of a report period.

3. I believe our policy needs clarification to ensure that all rating officials base their evaluation on rated time to

preclude injustice to individuals and disservice to the Army.

Encl

/s/ Crosbie E. Saint
CROSBIE E. SAINT
Lieutenant General, USA
Commanding

CERTIFIED TRUE COPY:

/s/ Dorene J. Steklasa
DORENE J. STEKLASA LTC, GS
Evaluation Systems Office

DAPC-MSE (AFZF-CG/17 Nov 87) 1st End LTC Hess/ds/221-9660

SUBJECT: Request for Policy Clarification

Commander, U.S. Total Army Personnel Agency, 200 Stovall Street, Alexandria, VA 22332-0400 18 DEC 1987

FOR: Lieutenant General Crosbie E. Saint, Commander, Headquarters, III Corps and Fort Hood, Fort Hood, Texas 76544-5056

1. This is in response to your correspondence of 17 Nov 87 concerning rating official qualifications for Officer Evaluation Reports (OER).

2. The relationship between the rater and the rated officer is the most important in the rating chain. It most often determines the nature of performance and the resulting evaluation. As a result, this relationship requires the longest qualification requirement, determines whether a

report is prepared, and is the only relationship affected by the rated officer's non-rated time.

3. The responsibility relationship between the rated officer and other rating officials (dual supervisor, intermediate rater, or senior rater) has less impact on actual performance and is mainly associated with an evaluation of potential. These relationships, therefore, deliberately have shorter qualification requirements, do not normally determine whether a report is required, and are not affected by rated officer non-rated time.

4. Your recommendation would require the field to track nonrated time for the rater and all other rating officials to determine when a report is due. Because situations where rated officer nonrated time affects the ability of other rating officials to prepare accurate evaluations are relatively rare, they can easily be handled on a case-by-case basis. In this matter, therefore, we believe the administrative burden imposed upon the field to keep track of nonrated time is not warranted.

5. Thank you for bringing this matter to my attention.

Encl wd

/s/ Donald W. Jones
DONALD W. JONES
Major General, USA
Commanding

APPENDIX O

MEMORANDUM FOR RECORD by MICHAEL J. BOONE, ANALYST in the OFFICE of the ADJUTANT GENERAL, UNITED STATES FORCES COMMAND, FORT MC PHERSON, GEORGIA

This Appendix has two pages (O-1 to O-2).

FCAG

10 May 1990

MEMORANDUM FOR RECORD

SUBJECT: Recording Duty Status

1. Paragraph 4 of referenced correspondence is neither factual nor accurate from a technical perspective about Army records keeping. It is also self contradictory. Note the following:

a. The "administrative burden" to track nonrated time is a given. If it were not tracked, OER could not be rendered. Our ability to, "track nonrated time for the rater", is unquestioned. How can the writer, obviously a commissioned officer, ignore the fact that as the nonrated time for the officers he rates is tracked so is his nonrated time – because he is also rated by someone.

b. A formal, and permanent, requirement for accumulating duty status history has been in place in the Army since the Morning Report. All [units] captured duty status changes and rendered daily reports which were permanently filed and are available in the Washington National Records Center (WNRC). The Morning Report was replaced by an automated strength accounting system – SIDPERS – but duty status history was accumulated manually on Personnel Data Cards. A card was kept on each soldier and retired to WNRC. The Personnel Data Card was eliminated in an effort to reduce administration. The replacement procedure is to accumulate the SIDPERS (AAC-C27) Personnel Strength Zero Balance Report locally, then retire it to the WNRC. This is current procedure. All of the foregoing records are stored for 75 years.

2. The US Army does have a duty status history on each soldier. This record is retired and available as a research tool to other government agencies. In so far as duty status correlates to nonrated time we bear the administrative burden of collecting and storing this data as part of the cost of doing business.

3. Reference: 1st Endorsement, HQ USATAPA, DAPC-MSE, dated 18 Dec 87, Subject: Request for Policy Clarification.

/s/ Michael J. Boone
MICHAEL J. BOONE
Analyist, Automation Br

APPENDIX P

AWARD OF THE MERITORIOUS SERVICE MEDAL (MSM) TO LIEUTENANT COLONEL STONEBURNER

This Appendix has two pages (P-1 to P-2).

P-1

[SEAL]

THE UNITED STATES OF AMERICA

TO ALL WHO SHALL SEE THESE PRESENTS,
GREETING: THIS IS TO CERTIFY THAT THE
PRESIDENT OF THE UNITED STATES OF AMERICA
AUTHORIZED BY EXECUTIVE
ORDER, 16 JANUARY 1969 HAS AWARDED

THE MERITORIOUS SERVICE MEDAL

TO LIEUTENANT COLONEL
WILLIAM D. STONEBURNER,
UNITED STATES ARMY,
ADJUTANT GENERAL'S CORPS

FOR outstanding and meritorious service while assigned as Operations and Training Officer, Office of the Directorate of Reserve Components, III Corps and Fort Hood, Fort Hood, Texas during the period 17 July 1983 to 1 March 1987. Lieutenant Colonel Stoneburner was directly responsible for coordinating the annual training of more than 1,600 reserve units during his tour. Through his efforts, the training of III Corps Reserve Component CAPSTONE units was significantly enhanced and the wartime fighting posture of III Corps was improved. Lieutenant Colonel Stoneburner's meritorious performance of duty is in keeping with the finest traditions of the military service and reflects distinct credit upon him, Fort Hood, and the United States Army.

GIVEN UNDER MY HAND IN THE CITY
OF WASHINGTON
THIS 8th DAY OF January 1987

[SEAL]

/s/ Crosbie E. Saint
CROSBIE E. SAINT
Lieutenant General, USA
Commander, III Corps and Fort Hood

/s/ John D. Marsh, Jr.
SECRETARY OF THE ARMY

APPENDIX Q

MOTION TO SUPPLEMENT THE RECORD AND THE COURT OF APPEALS ORDER REFERRING THIS MOTION TO THE MERITS OF THE APPEAL

This Appendix has six pages (Q-1 to Q-6)

97-50765

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

WILLIAM D. STONEBURNER, Lieutenant Colonel

Plaintiff – Appellant

v.

SECRETARY OF THE ARMY; ARMY BOARD FOR CORRECTIONS OF MILITARY RECORDS

Defendants – Appellees

On Appeal from the United States District Court for the Western District of Texas

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MOTION TO SUPPLEMENT THE RECORD

William D. Stoneburner
P.O. Box 1792
Belton, Texas 76513-5792
(254) 933-0289
Pro Se

Appellant files his motion to supplement the record and shows this Court as follows:

1. Appellant, pursuant to Rule 27, Federal Rules of Appellant Procedure and Fifth Circuit Rule 27.1.1 of this Court moves that the record in this case be supplemented with a cover letter dated December 20, 1990 from the U.S. Army Reserve Personnel Center. The material requested is important to the jurisdictional issues before this Court and the existence of the said cover letter was presented to the trial court below as an

allegation of Appellant's amended complaint (R, I, pg. 123). See also Exhibit "B" attached hereto and incorporated herein for all purposes.

2. The cover letter from Department of the Army, U.S. Army Reserve Personnel Center (ARPERCEN) gave appellant notice that the ABCMR took final action on his application and denied said application. It is attached hereto as Exhibit "A" and incorporated herein for all purposes.

3. Defendants answer to the amended complaint denied the allegations of paragraph 9 of the amended complaint for lack of knowledge or information sufficient to form a belief as to their truth (R, I, pp. 130-131). See Exhibit "C" attached hereto and incorporated herein for all purposes.

4. Although the trial court was made aware of the existence of said cover letter, the actual cover letter does not appear anywhere in the record. It establishes that this complaint was timely filed by appellant. The cover letter was signed by the Chief, Personnel Services Division, ARPERCEN. The cover letter stated appellant's ABCMR application has been denied by the board since the ABCMR determined that applicant had not provided enough proof "to show that an error or injustice exists in the record." (See attached Exhibit "A").

5. Since the actual cover letter does not appear in the record and since defendants denied the allegation concerning this cover letter, appellant requests that it be added to the record to establish that his original complaint was timely filed with the district court below. The failure to previously include this cover letter in the record

was clerical in nature as appellant inadvertently failed to attach it to appellant's amended complaint.

6. Inclusion of this cover letter will assist this Court in its determination that it has both subject matter and appellate jurisdiction over this case. Movant has contacted the attorney for defendants and he opposes this motion.

WHEREFORE, Appellant prays that this Honorable Court of Appeals for the Fifth Circuit grant his motion to supplement the record by adding the attached cover letter, dated December 20, 1990, from the U.S. Army Reserve Personnel Center and appellant prays for such other and additional relief to which he is justly entitled.

Respectfully submitted,

/s/ William D. Stoneburner
WILLIAM D. STONEBURNER
P. O. Box 1792
BELTON, TEXAS 76513-5792
(254) 933-0289
Pro Se

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing motion for the appellant, William D. Stoneburner, has been served by placing the same in the regular U.S. mail, first class, postage prepaid, on this the 17 day of December 1997, upon the following party:

KURT J. BOHN
Assistant U.S. Attorney
816 Congress Avenue
Suite 1000
Austin, Texas 78701-2443

/s/ William D. Stoneburner
William D. Stoneburner

EXHIBIT "A"

DEPARTMENT OF THE ARMY
U.S. ARMY RESERVE PERSONNEL CENTER
9700 PAGE BOULEVARD
ST. LOUIS, MO 63132-5200

[SEAL] REPLY TO
ATTENTION OF

DEC 20 1990

Army Board for Correction
of Military Records Section

SUBJECT: Stoneburner, William D. 563 46 1507

LTC William D. Stoneburner, USAR
9466 Cypress Lane
Jonesboro, Georgia 30236-5784

Dear Colonel Stoneburner:

I have been asked by the Army Board for Correction of Military Records to reply to your request for correction of your Army records.

Your application has been denied under the administrative rules given by the Secretary of the Army for guidance of the Army Board for Correction of Military Records. These rules state the Board may deny an application if it determines that not enough proof was presented to show that an error or injustice exists in the record. A copy of the Memorandum of Consideration stating the Board's reasons for denial is enclosed.

In the absence of new evidence showing that an error or injustice exists, further consideration by the Board is not possible.

BY ORDER OF THE SECRETARY OF THE ARMY:

/s/ Ed L. Yowell for
J. C. Herbert
Lieutenant Colonel, U.S. Army
Chief Personnel Services
Division

Enclosures

Q-6

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-50765

WILLIAM D STONEBURNER, Lieutenant Colonel

Plaintiff – Appellant

v.

SECRETARY OF THE ARMY; ARMY BOARD FOR CORRECTIONS OF MILITARY RECORDS

Defendants – Appellees

Appeal from the United States District Court for the Western District of Texas, Waco

---

(Filed Jan. 22, 1998)

ORDER:

IT IS ORDERED that appellant's motion to supplement the record on appeal is Referred To The Merits Of The Appeal.

/s/ James L. Dennis
JAMES L. DENNIS
UNITED STATES
CIRCUIT JUDGE

MOT-21

APPENDIX R

SUPPLEMENTAL MEMORANDUM TO THE ABCMR, DATED 27 JUNE 1990 BY LTC STONEBURNER, DRCS ANNUAL TRAINING DOCUMENTS FOR AT-87 AND AT-88, AND MEMORANDUM, SUBJECT: PLANNING FOR TRAINING YEAR 1989, DATED JUNE 21, 1990 BY LTC (RET) NEWMAN

This Appendix has 31 pages (R-1 through R-31)

27 June 1990

SUPPLEMENTAL MEMORANDUM for the Army Board for Correction of Military Records, Department of the Army, Washington, DC 20310-1803

1. This supplemental memorandum has four purposes:

a. To bring to the attention of the board General Saint's correspondence to PERSCOM for a "Request for Policy Clarification" and the additional correspondence that arose from that 17 November 1987 letter.

b. To respond to the comment of LTC English that he had separate and distinct duties for me in the March – May 1987 time period to which I agreed.

c. To respond to the comment of LTC English that I had responsibilities to work on AT planning during the March – May 1987 time period.

d. To show by the record that it was reasonable for LTC Stoneburner to assume he was to be rated by LTC English and COL Woodward with a cutoff date between the end of January and the 8th of March 1987 with the balance of my time at Fort Hood being nonrated.

2. GENERAL SAINT'S REQUEST FOR POLICY CLARIFICATION:

The Request for Policy Clarification (Exhibit 1 to TAB 12) was part of a Commander's Inquiry that LTC Stoneburner requested General Saint commence. In the last paragraph of that letter General Saint asserts that "our policy needs clarification to ensure that all rating officials base their evaluation on rated time to preclude injustice to individuals and disservice to the Army".

I had not obtained a copy of the PERSCOM reply to General Saint so I wrote to General Saint requesting a copy of same (Exhibit 2 to TAB 12). On or about 5 May 1990 I received a copy of the reply to General Saint's letter (Exhibit 3 to TAB 12) from PERSCOM. The SIDPERS Analyst for FORSCOM, Michael J. Boone, reviewed the PERSCOM reply on 10 May 1990 and found it to be "neither factual nor accurate from a technical perspective about Army records keeping" (Exhibit 4 to TAB 12). In the meantime General Saint directed MAJ Kuzma to research and reply to LTC Stoneburner which correspondence was received 11 June 1990 (Exhibit 5 to TAB 12). LTC Stoneburner called MAJ Kuzma on 13 June 1990 to ask for clarification of the first sentence in the last paragraph of his letter (telephone number 011 49 6221 57 7026 or 8843). Then LTC Stoneburner sent a letter to MAJ Kuzma to confirm his understanding of their fonecon of that morning (Exhibit 6 to TAB 12).

3. LTC ENGLISH'S ASSERTION THAT HE GAVE ME DUTIES, SEPARATE AND DISTINCT FROM MAJOR MANN'S, DURING THE PERIOD FROM MARCH – MAY 87.

LTC English stated he made it clear to LTC Stoneburner on several occasions that MAJ Mann had certain duties and LTC Stoneburner had other duties until LTC Stoneburner left on PCS to his new assignment.

What were those duties? LTC Stoneburner categorically denies he delineated and explained separate and distinct duties for me at any time let alone on several occasions for the period March – May 87. My denial of his

assertion is not my only proof. My approved absences for this period impeaches his assertion.

If, indeed, he did give me separate duties, how could he afford to permit me to be absent from the office for TDY schooling, leave, and permissive TDY for a total of 95 days? Why didn't he deny me the 33 days leave he approved? Why didn't he object to the 9 days of permissive TDY? Why didn't he demand that I take TDY schooling after I arrived at my new assignment? These events are as follows:

31 Jan – 8 Mar 87 (TDY schooling with 2 days added for travel)

25 Mar – 23 Apr 87 (leave)

27 Apr – 5 May 87 (permissive TDY)

9 – 24 May 87 (TDY schooling with 2 days added for travel)

26 – 28 May 87 (leave)

This schedule meant I would be in the office for only one working day in the month of April (Friday, 24 April 1987) and for only three workings days in the month of May (Wednesday-Friday, 6-8 May 1987) (25 May 87 was a holiday – Memorial Day). During the few days I was in the office early in May it was necessary for me to make the necessary arrangements to complete the processing for the shipment of my household goods to Georgia since I would be TDY in Florida for the next two weeks. Also, during those days I had to complete the bulk of my outprocessing (to include the turn-in of field gear). Moreover, LTC English failed to give me any work to do in the two weeks I was in the office in March 1987.

4. LTC ENGLISH'S ASSERTION THAT HE GAVE LTC STONEBURNER RESPONSIBILITIES TO WORK ON "AT PLANNING" DURING THE MARCH – MAY 1987 TIME PERIOD.

LTC English states LTC Stoneburner was to continue to work on the Annual Training (AT) plan until his PCS. Again, I categorically deny LTC English's assertion. But let the record speak for itself.

The Annual Training Plan (AT) for 1987 was signed by COL Woodward and sent to the III Corps command group for approval on 3 March 1987. It was approved by General Crosbie E. Saint on 9 March 1987 (Exhibit 7 to TAB 12) – the very day LTC Stoneburner returned from 35 days of TDY. Since the AT 87 training plan was sent for approval on 3 March 87, any problems with the support of the "Starburst" exercise had to have been resolved prior to that date – prior to my return from TDY in Florida for 35 days.

The AT 88 planning during the period Feb – Jun 87 was accomplished entirely by Howard Edgeworth (GS-11), Bill Baril (GS-9), and MAJ Mann. They were the only ones to attend the CONUSA Site-DAte Scheduling Conferences (Exhibit 8 to TAB 12, five pages). After my return on 9 March 1987 I offered to assist MAJ Mann with the 88 planning on several occasions. However, MAJ Mann refused my assistance on each of those occasions saying he didn't need my help. LTC Stoneburner was not involved in any AT 88 planning during the March – May 1987 timeframe.

What about plans for AT 89 during the period March – May 87? Was it possible to commence planning for AT 89 at that time? No, it was not!

This fact is attested to by the European War Planner in the War Plans Division, J5, Forces Command (LTC Newman). His statement (Exhibit 9 to TAB 12) reveals that the 88 CAPSTONE downtraces were not available for release to the field (including CONUS Corps) until at least 1 October 1987. This statement further concludes that any AT 89 training plans had to be based upon the joint planning requirements in effect at the time. "For annual training 89 plans, this meant that they had to be based upon CAPSTONE 88 alignments."

5. IT WAS REASONABLE FOR LTC STONEBURNER TO ASSUME HE WAS TO BE RATED AND SENIOR RATED, RESPECTIVELY, BY LTC ENGLISH AND COL WOODWARD WITH A CUTOFF DATE BETWEEN THE END OF JANUARY AND THE 8TH OF MARCH 1987.

Such a reasonable assumption is based upon the following facts:

a. A MSM for service was approved for LTC Stoneburner on 8 January 1987 by the Commander, III Corps.

b. MAJ Mann, my replacement, arrived on 12 January 1987.

c. LTC Stoneburner's completed OER support form was hand-carried to LTC English by LTC Stoneburner in January 1987 (it showed COL Woodward as Senior Rater).

d. LTC English never questioned LTC Stoneburner as to why he was turning-in his support form at that time

nor did he ever ask him to add or supplement it at a later date.

e. LTC Stoneburner is farewelled on the evening of his return from 35 days of TDY – 9 March 1987 (Exhibit 10 to TAB 12).

f. LTC Stoneburner ask LTC English at the start of the two weeks in March 1987 if there was anything he wanted me to do. He declined to give me anything work to do at that time.

g. LTC English and his wife have persistent medical problems during the March – May 1987 period that require LTC English's repeated absence from the office. (he retired with 30% physical disability)

h. LTC Stoneburner received no written or verbal notice of COL Richardson's "appointment as his senior rater".

i. It was commonplace for LTC English to be several weeks or months behind on the writing of OERs.

Based upon the foregoing and the previous matters submitted to the board this appeal should be approved.

/s/ William D. Stoneburner
WILLIAM D. STONEBURNER
LTC, QM
563-46-1507

DISPOSITION FORM

For use of this form, see AR 340-15; the proponent agency is TAGO. 63-11

REFERENCE OR OFFICE SYMBOL
AFZF-RC

SUBJECT
Fort Hood Circular 135-87-7 "ACTION DF"

TO Chief of Staff [CG✔ 5 Mar]

FROM [Ret 9 Mar → DRC 8 Mar 87 ★ ★ ★]

DATE 3 March 1987 CMT 1
Mr. Edgeworth/hbe/287-8192

1. Purpose. To obtain approval to publish the 1987 Reserve Component Annual Training Plan, Fort Hood Circular 135-87-7.

2. Discussion.

a. This circular announces the Annual Training (AT) schedule for Reserve Component (RC) units training at Fort Hood, as well as those III Corps Directed Training Affiliation (DTA) units conducting their AT at other CONUS installations or overseas. FORSCOM Reg 350-2, Reserve Component (US Army) Training, specifies that evaluators for RC DTA units will be provided by the Active Component (AC) sponsor, regardless of their CONUS training site. In addition, AR 11-30 and FORSCOM Reg 350-4 requires the AC sponsor unit to advise and assist such RC units with their year-round training.

b. III Corp's AC host units for training and evaluation are based upon formal training associations, alignments, and exercise participations.

c. The actual establishment of host and evaluation responsibilities for some RC participants for REFORGER 87 are still on-going, due to AC player commitments during REFORGER, and will be identified in a change to this circular upon confirmation. Due to the extensive number of units requiring eminent evaluation within CONUS, as identified in Appendix A, it is not feasible to delay publication of the basic circular until final REFORGER evaluation commitments have been confirmed.

3. Recommendation. That the Commanding General approve Fort Hood Circular 135-87-7 for immediate publication.

/s/ [Initials Illegible]

[9 Mar]

/s/ James K. Woodward
JAMES K. WOODWARD
COL, GS
Director, Reserve Components

COORDINATION:		CONCUR	NONCONCUR
G3	(S: 16 Oct 86)	COL R. S. FIERO 870303	w/Cmt_____
G4	(S: 16 Oct 86)	COL E. G. Wentworth 860930	_____
G5	(S: 16 Oct 86)	MAJ L. T. Jankowski 861020	w/Cmt_____
SJA	(S: 16 Oct 86)	LTC D. L. Hansen 861015	_____
Corps EN	(S: 16 Oct 86)	COL L. L. Edge 861016	_____
3 CID	(S: 16 Oct 86)	CPT W. D. Borneman 860930	_____
6 CB (AC)	(S: 16 Oct 86)	COL W. H. Yates 861016	_____
13 SUPCOM	(S: 16 Oct 86)	COL W. H. Foy 861010	w/Cmt_____
16 ATC Bn	(S: 16 Oct 86)	LTC W. J. Hendell 861016	_____
89 MP Bde	(S: 16 Oct 86)	LTC T. R. Mann 861020	w/Cmt_____
504 MI Bde	(S: 16 Oct 86)	MAJ B. D. Miner 861001	w/Cmt_____
524 EN Co	(S: 16 Oct 86)	CPT J. P. Sundet 860926	_____
MEDDAC	(S: 16 Oct 86)	COL R. G. Moore Jr. 860926	_____
DOL	(S: 16 Oct 86)	COL J. E. Gauze 861186	w/Cmt_____
DOIM	(S: 16 Oct 86)	COL T. J. Leonard 860930	_____

REQUEST AND AUTHORIZATION FOR TDY
TRAVEL OF DOD PERSONNEL
(Reference Joint Travel Regulations)
Travel Authorized as indicated in Items 2 through 21.

1. DATE OF REQUEST 5 JAN 87

REQUEST FOR OFFICIAL TRAVEL

2. NAME (*Last, First, Middle Initial*)

SEE ATTACHED

3. POSITION TITLE AND GRADE OPERATING

SEE ATTACHED

4. OFFICIAL STATION

FORT HOOD, TEXAS

5. ORGANIZATIONAL ELEMENT

DRCS WAT4AA

6. PHONE NO 287-8192

7. TYPE OF ORDERS TDY

8. SECURITY CLEARANCE N/A

9. PURPOSE OF TDY

To attend 1st Army AT-88 Training/Scheduling Conference

AUTH: Phoncon w/Ms. Hall, DCST 1st Army

10*a*. APPROX. NO OF DAYS OF TDY (*Including travel time*)

4

b. PROCEED O/A (*Date*)

4 MAR 87

11. ITINERARY [ ] VARIATION AUTHORIZED

From Fort Hood, Texas to Buffalo, NY and return to Fort Hood, Texas

12. MODE OF TRANSPORTATION

COMMERCIAL				GOVERNMENT		
RAIL	AIR	BUS	SHIP	AIR	VEHICLE	SHIP
	XX					

[ ] AS DETERMINED BY APPROPRIATE TRANSPORTATION OFFICER (*Overseas Travel only*)

PRIVATELY OWNED CONVEYANCE (*Check one*)

RATE PER MILE:

[ ] MORE ADVANTAGEOUS TO GOVERNMENT

[ ] MILEAGE REIMBURSEMENT AND PER DIEM LIMITED TO CONSTRUCTIVE COST OF COMMON CARRIER TRANSPORTATION & RELATED PER DIEM AS DETERMINED IN JTR. TRAVEL TIME LIMITED AS INDICATED IN JTR

13. [X] PER DIEM AUTHORIZED IN ACCORDANCE WITH JTR.

[ ] OTHER RATE OF PER DIEM (*Specify*)

14. ESTIMATED COST

PER DIEM	TRAVEL	OTHER RAC 114.00	TOTAL
$855.00	$1206.00	Regis Fee $30.00	$2205.00

15. ADVANCE AUTHORIZED

$ MAX

16. REMARKS (*Use this space for special requirements leave, superior or 1st-class accommodations, excess baggage, registration fees, etc.*)

All excess travel time will be charged as leave except that which is determined by the Commander to be unavoidable. Government quarters and mess are not available. You will request from your lodging host and furnish to your supporting finance office a receipt for lodging expense. Travel vouchers will be submitted to the custodian of your finance records within 15 days of completion of travel. Rental car is authorized for Mr. Edgeworth. Report to Bldg. 108 for arrangements. Registration fees are authorized. Parking fees are authorized.

DIST: Indiv-10; FAO-1A-2; DRCS-B-1; III Corps Fin-1.

17. REQUESTING OFFICIAL (*Title and signature*)

/s/ Ronald W. English

RONALD W. ENGLISH, LTC, GS, DRCS

18. APPROVING OFFICIAL (*Title and signature*)

/s/ James K. Woodward

JAMES K. WOODWARD, COL, GS, DRCS

AUTHORIZATION

19. ACCOUNTING CITATION

2172080 76-2041 P510000 211E $855.00
219E $1350.00 S41093 DFGL HAQ 013

/s/ Barbara M. Cortez

BARBARA M. CORTEZ, Budget Assistant, DRCS 5 JAN 87
DSSN: 6341

20. ORDER AUTHORIZING OFFICIAL (*Title and signature*) OR AUTHENTICATION

HQ III CORPS AND FORT HOOD, FORT HOOD, TX 76544-5056

FOR THE COMMANDER

A A. REMLING II, COL AG Adjutant-General

for /s/ Caral Y. Slaughter

21. DATE ISSUED

9 January 1987

22. TRAVEL ORDER NUMBER

1-61

[Back Side Of Order]

DIRECTORATE OF RESERVE COMPONENTS SUPPORT, III CORPS AND FORT HOOD

TRAVEL ORDER NUMBER 1-61 DATED 9 January 1987

EDGEWORTH, HOWARD B. 467-40-7930	GS-11 CHIEF, EVAL HQ DRCS
BARIL, WILLIAM C. 390-44-7118	GS-09 ADMIN OFCR, DRCS EVAL HQ
MANN, JAMES P. 444-40-4513	MAJ CHIEF, UNIT TRNG BRANCH

REQUEST AND AUTHORIZATION FOR TDY
TRAVEL OF DOD PERSONNEL
(Reference Joint Travel Regulations)
Travel Authorized as indicated in Items 2 through 21.

1. DATE OF REQUEST 5 JAN 87

REQUEST FOR OFFICIAL TRAVEL

2. NAME (*Last, First, Middle Initial*)

SEE ATTACHED

3. POSITION TITLE AND GRADE OPERATING

SEE ATTACHED

4. OFFICIAL STATION

FORT HOOD, TEXAS

5. ORGANIZATIONAL ELEMENT

DRCS WAT4AA

6. PHONE NO 287-8192

7. TYPE OF ORDERS TDY

8. SECURITY CLEARANCE N/A

9. PURPOSE OF TDY

To attend 2d Army AT-88 Site-Date Scheduling Conference

AUTH: 2d Army Ltr Subj: 2d Army Site-Date Conference

10*a*. APPROX. NO OF DAYS OF TDY (*Including travel time*)

4

b. PROCEED O/A (*Date*)

11 FEB 87

11. ITINERARY [ ] VARIATION AUTHORIZED

From Fort Hood, Texas to Atlanta, GA and return to Fort Hood, Texas

12. MODE OF TRANSPORTATION

COMMERCIAL				GOVERNMENT		
RAIL	AIR	BUS	SHIP	AIR	VEHICLE	SHIP
	XX					

[ ] AS DETERMINED BY APPROPRIATE TRANSPORTATION OFFICER (*Overseas Travel only*)

PRIVATELY OWNED CONVEYANCE (*Check one*)

RATE PER MILE:

[ ] MORE ADVANTAGEOUS TO GOVERNMENT

[ ] MILEAGE REIMBURSEMENT AND PER DIEM LIMITED TO CONSTRUCTIVE COST OF COMMON CARRIER TRANSPORTATION & RELATED PER DIEM AS DETERMINED IN JTR. TRAVEL TIME LIMITED AS INDICATED IN JTR

13. [X] PER DIEM AUTHORIZED IN ACCORDANCE WITH JTR.

[ ] OTHER RATE OF PER DIEM (*Specify*)

14. ESTIMATED COST

PER DIEM	TRAVEL	OTHER RAC 114.00	TOTAL
$855.00	$996.00	Regis Fee $30.00	$1995.00

15. ADVANCE AUTHORIZED

$ MAX

16. REMARKS (*Use this space for special requirements leave, superior or 1st-class accommodations, excess baggage, registration fees, etc.*)

All excess travel time will be charged as leave except that which is determined by the Commander to be unavoidable. Government quarters and mess are not available. You will request from your lodging host and furnish to your supporting finance office a receipt for lodging expense. Travel vouchers will be submitted to the custodian of your finance records within 15 days of completion of travel. Rental car is authorized for Mr. Edgeworth. Parking fees are authorized. Registration fee is authorized. Report to Bldg. 108 for rental car arrangements.

DIST: Indiv-10; FAO-IA-2; DRCS-B-1; III Corps Fin-1.

17. REQUESTING OFFICIAL (*Title and signature*)

/s/ Ronald W. English

RONALD W. ENGLISH, LTC, GS, DRCS

18. APPROVING OFFICIAL (*Title and signature*)

/s/ James K. Woodward

JAMES K. WOODWARD, COL, GS, DRCS

AUTHORIZATION

19. ACCOUNTING CITATION

2172080 76-2041 P10000 211E $855.00
219E $1140.00 S41093 DFGL HAQ 009

/s/ Barbara M. Cortez

BARBARA M. CORTEZ, Budget Assistant, DRC 5 JAN 87

DSSN: 6341

20. ORDER AUTHORIZING OFFICIAL (*Title and signature*) OR AUTHENTICATION

HQ III CORPS AND FORT HOOD, FORT HOOD, TX 76544-5056

FOR THE COMMANDER

A A. REMLING II, COL AG Adjacent-General

for /s/ Caral Y. Slaughter

21. DATE ISSUED

9 January 1987

22. TRAVEL ORDER NUMBER

1-64

[Back Side Of Order]

DIRECTORATE OF RESERVE COMPONENTS SUPPORT, III CORPS AND FORT HOOD

TRAVEL ORDER NUMBER 1-64 DATED 9 January 1987

EDGEWORTH, HOWARD B. 467-40-7930	GS-11 CHIEF, EVAL HQ DRCS
BARIL, WILLIAM C. 390-44-7118	GS-09 ADMIN OFCR, DRCS EVAL HQ
MANN, JAMES P. 444-40-4513	MAJ CHIEF, UNIT TRNG BRANCH

REQUEST AND AUTHORIZATION FOR TDY
TRAVEL OF DOD PERSONNEL
(Reference Joint Travel Regulations)
Travel Authorized as indicated in Items 2 through 21.

1. DATE OF REQUEST 5 JAN 87

REQUEST FOR OFFICIAL TRAVEL

2. NAME (*Last, First, Middle Initial*)

SEE ATTACHED

3. POSITION TITLE AND GRADE OPERATING

SEE ATTACHED

4. OFFICIAL STATION

FORT HOOD, TEXAS

5. ORGANIZATIONAL ELEMENT

DRCS WAT4AA

6. PHONE NO 287-8192

7. TYPE OF ORDERS TDY

8. SECURITY CLEARANCE N/A

9. PURPOSE OF TDY

To attend AT-88 Site-Date Scheduling Conference

AUTH: 4A Ltr Subj: Fourth Army Site/Date Conference

10*a*. APPROX. NO OF DAYS OF TDY (*Including travel time*)

4

b. PROCEED O/A (*Date*)

30 Jan 87

11. ITINERARY [ ] VARIATION AUTHORIZED

From Fort Hood, Texas to Northbrook, IL and return to Fort Hood, Texas

12. MODE OF TRANSPORTATION

COMMERCIAL				GOVERNMENT		
RAIL	AIR	BUS	SHIP	AIR	VEHICLE	SHIP
	XX					

[ ] AS DETERMINED BY APPROPRIATE TRANSPORTATION OFFICER (*Overseas Travel only*)

PRIVATELY OWNED CONVEYANCE (*Check one*)
RATE PER MILE:

[ ] MORE ADVANTAGEOUS TO GOVERNMENT

[ ] MILEAGE REIMBURSEMENT AND PER DIEM LIMITED TO CONSTRUCTIVE COST OF COMMON CARRIER TRANSPORTATION & RELATED PER DIEM AS DETERMINED IN JTR. TRAVEL TIME LIMITED AS INDICATED IN JTR

13. [X] PER DIEM AUTHORIZED IN ACCORDANCE WITH JTR.

[ ] OTHER RATE OF PER DIEM (*Specify*)

14. ESTIMATED COST

PER DIEM	TRAVEL	OTHER RAC 114.00	TOTAL
$855.00	$780.00	Regis Fee $30.00	$1779.00

15. ADVANCE AUTHORIZED

$ MAX

16. REMARKS (*Use this space for special requirements leave, superior or 1st-class accommodations, excess baggage, registration fees, etc.*)

All excess travel time will be charged as leave except that which is determined by the Commander to be unavoidable. Government quarters and mess are not available. You will request from your lodging host and furnish to your supporting finance office a receipt for lodging expense. Travel vouchers will be submitted to the custodian of your finance records within 15 days of completion of travel. Rental car is authorized for Mr. Edgeworth. Parking fees are authorized. Registration fee is authorized.

DIST: Indiv-10; FAO-IA-2; DRCS-B-1; III Corps Fin-1.

17. REQUESTING OFFICIAL (*Title and signature*)

/s/ Ronald W. English

RONALD W. ENGLISH, LTC, GS, DRCS

18. APPROVING OFFICIAL (*Title and signature*)

/s/ James K. Woodward

JAMES K. WOODWARD, COL, GS, DRCS

AUTHORIZATION

19. ACCOUNTING CITATION

2172080 76-2041 P510000 211E $855.00
219E $924.00 S41093 DFGL HAQ 009

/s/ Barbara M. Cortez

BARBARA M. CORTEZ, Budget Assistant, DRC 5 JAN 87
DSSN: 6341

20. ORDER AUTHORIZING OFFICIAL (*Title and signature*) OR AUTHENTICATION

HQ III CORPS AND FORT HOOD, FORT HOOD, TX 76544-5056

FOR THE COMMANDER

A A. REMLING II, COL AG Adjacent-General

for /s/ Caral Y. Slaughter

21. DATE ISSUED

9 January 1987

22. TRAVEL ORDER NUMBER

1-65

[Back Side Of Order]

DIRECTORATE OF RESERVE COMPONENTS SUPPORT, III CORPS AND FORT HOOD

TRAVEL ORDER NUMBER 1-65 DATED 9 January 1987

EDGEWORTH, HOWARD B. 467-40-7930	GS-11 CHIEF, EVAL HQ DRCS
BARIL, WILLIAM C. 390-44-7118	GS-09 ADMIN OFCR, DRCS EVAL HQ
MANN, JAMES P. 444-40-4513	MAJ CHIEF, UNIT TRNG BRANCH

REQUEST AND AUTHORIZATION FOR TDY
TRAVEL OF DOD PERSONNEL
(Reference Joint Travel Regulations)

Travel Authorized as indicated in Items 2 through 21.

1. DATE OF REQUEST 5 JAN 87

REQUEST FOR OFFICIAL TRAVEL

2. NAME (*Last, First, Middle Initial*)

SEE ATTACHED

3. POSITION TITLE AND GRADE OPERATING

SEE ATTACHED

4. OFFICIAL STATION

FORT HOOD, TEXAS

5. ORGANIZATIONAL ELEMENT

DRCS WAT4AA

6. PHONE NO 287-8192

7. TYPE OF ORDERS TDY

8. SECURITY CLEARANCE N/A

9. PURPOSE OF TDY

To attend 5th Army AT-88 Training/Scheduling Conference

AUTH: Msg #171530Z dtd Nov 86 Subj: 5th Army AT 88 TRNG/SCHDG Conf

10*a*. APPROX. NO OF DAYS OF TDY (*Including travel time*)

4

b. PROCEED O/A (*Date*)

17 FEB 87

11. ITINERARY [ ] VARIATION AUTHORIZED

From Fort Hood, Texas to San Antonio, Texas and return to Fort Hood, Texas

DIST: Indiv-10; FAO-IA-2; DRCS-B-1; III Corps Fin-1.

12. RENTAL CAR MODE OF TRANSPORTATION

COMMERCIAL				GOVERNMENT		
RAIL	AIR	BUS	SHIP	AIR	VEHICLE	SHIP

[ ] AS DETERMINED BY APPROPRIATE TRANSPORTATION OFFICER (*Overseas Travel only*)

PRIVATELY OWNED CONVEYANCE (*Check one*)

RATE PER MILE:

[ ] MORE ADVANTAGEOUS TO GOVERNMENT

[ ] MILEAGE REIMBURSEMENT AND PER DIEM LIMITED TO CONSTRUCTIVE COST OF COMMON CARRIER TRANSPORTATION & RELATED PER DIEM AS DETERMINED IN JTR. TRAVEL TIME LIMITED AS INDICATED IN JTR

13. [X] PER DIEM AUTHORIZED IN ACCORDANCE WITH JTR.

[ ] OTHER RATE OF PER DIEM (*Specify*)

14. ESTIMATED COST

PER DIEM	TRAVEL	OTHER RAC 114.00	TOTAL
$855.00	$-0-	Regis Fee $30.00	$999.00

15. ADVANCE AUTHORIZED

$ MAX

16. REMARKS (*Use this space for special requirements leave, superior or 1st-class accommodations, excess baggage, registration fees, etc.*)

All excess travel time will be charged as leave except that which is determined by the Commander to be unavoidable. Government quarters and mess are not available. You will request from your lodging host and furnish to your supporting finance office a receipt for lodging expense. Travel vouchers will be submitted to the custodian of your finance records within 15 days of completion of travel. Rental car is authorized. Report to Bldg. 108 for arrangements. Utilization of special conveyance to, from and between duty stations is authorized as more advantageous to the Government. Registration fees and parking fees are authorized. Mr. Edgeworth is authorized rental car.

DIST: Indiv-10; FAO-1A-2; DRCS-B-1; III Corps Fin-1.

17. REQUESTING OFFICIAL (*Title and signature*)

/s/ Ronald W. English

RONALD W. ENGLISH, LTC, GS, DRCS

18. APPROVING OFFICIAL (*Title and signature*)

/s/ James K. Woodward

JAMES K. WOODWARD, COL, GS, DRCS

AUTHORIZATION

19. ACCOUNTING CITATION

2172080 76-2041 P510000 211E $855.00
219E $144.00 S41093 DEGL HAQ 011

/s/ Barbara M. Cortez

BARBARA M. CORTEZ, Budget Assistant, DRC 5 JAN 87
DSSN: 6341

20. ORDER AUTHORIZING OFFICIAL (*Title and signature*) OR AUTHENTICATION

HQ III CORPS AND FORT HOOD, FORT HOOD, TX 76544-5056

FOR THE COMMANDER

A A. REMLING II, COL AG Adjacent-General

for /s/ Caral Y. Slaughter

21. DATE ISSUED

9 January 1987

22. TRAVEL ORDER NUMBER

1-63

[Back Side Of Order]

DIRECTORATE OF RESERVE COMPONENTS SUPPORT, III CORPS AND FORT HOOD

TRAVEL ORDER NUMBER 1-63 DATED 9 January 1987

EDGEWORTH, HOWARD B. 467-40-7930	GS-11 CHIEF, EVAL HQ DRCS
BARIL, WILLIAM C. 390-44-7118	GS-09 ADMIN OFCR, DRCS EVAL HQ
MANN, JAMES P. 444-40-4513	MAJ CHIEF, UNIT TRNG BRANCH

REQUEST AND AUTHORIZATION FOR TDY
TRAVEL OF DOD PERSONNEL
(Reference Joint Travel Regulations)

Travel Authorized as indicated in Items 2 through 21.

1. DATE OF REQUEST 5 JAN 87

REQUEST FOR OFFICIAL TRAVEL

2. NAME (*Last, First, Middle Initial*)

SEE ATTACHED

3. POSITION TITLE AND GRADE OPERATING

SEE ATTACHED

4. OFFICIAL STATION

FORT HOOD, TEXAS

5. ORGANIZATIONAL ELEMENT

DRCS WAT4A

6. PHONE NO 287-8192

7. TYPE OF ORDERS TDY

8. SECURITY CLEARANCE N/A

9. PURPOSE OF TDY

To attend 6th Army AT-88 Training/Scheduling Conference

AUTH: Phoneon w/Ms. Goldberg, DCST 6th U. S. Army

10*a*. APPROX. NO OF DAYS OF TDY (*Including travel time*)

5

b. PROCEED O/A (*Date*)

24 FEB 87

11. ITINERARY [ ] VARIATION AUTHORIZED

From Fort Hood, Texas to Reno, NV and return to Fort Hood, Texas

12. MODE OF TRANSPORTATION

COMMERCIAL				GOVERNMENT		
RAIL	AIR	BUS	SHIP	AIR	VEHICLE	SHIP
	XX					

[ ] AS DETERMINED BY APPROPRIATE TRANSPORTATION OFFICER (*Overseas Travel only*)

PRIVATELY OWNED CONVEYANCE (*Check one*)

RATE PER MILE:

[ ] MORE ADVANTAGEOUS TO GOVERNMENT

[ ] MILEAGE REIMBURSEMENT AND PER DIEM LIMITED TO CONSTRUCTIVE COST OF COMMON CARRIER TRANSPORTATION & RELATED PER DIEM AS DETERMINED IN JTR. TRAVEL TIME LIMITED AS INDICATED IN JTR

13. [X] PER DIEM AUTHORIZED IN ACCORDANCE WITH JTR.

[ ] OTHER RATE OF PER DIEM (*Specify*)

14. ESTIMATED COST

PER DIEM	TRAVEL	OTHER RAC 143.00	TOTAL
$1028.00	$1710.00	Regis Fee $30.00	$2951.00

15. ADVANCE AUTHORIZED

$ MAX

16. REMARKS (*Use this space for special requirements leave, superior or 1st-class accommodations, excess baggage, registration fees, etc.*)

All excess travel time will be charged as leave except that which is determined by the Commander to be unavoidable. Government quarters and mess are not available. You will request from your lodging host and furnish to your supporting finance office a receipt for lodging expense. Travel vouchers will be submitted to the custodian of your finance records within 15 days of completion of travel. Rental car is authorized for Mr. Edgeworth. Report to Bldg. 108 for arrangements. Registration fee is authorized. Parking fees are authorized.

DIST: Indiv-10; FAO-IA-2; DRCS-B-1; III Corps Fin-1.

17. REQUESTING OFFICIAL (*Title and signature*)

/s/ Ronald W. English

RONALD W. ENGLISH, LTC, GS, DRCS

18. APPROVING OFFICIAL (*Title and signature*)

/s/ James K. Woodward

JAMES K. WOODWARD, COL, GS, DRCS

AUTHORIZATION

19. ACCOUNTING CITATION

2172080 76-2041 P510000 211E $1068.00
219E $1883.00 S41093 DEGL HAQ 012

/s/ Barbara M. Cortez

BARBARA M. CORTEZ, Budget Assistant, DRC 5 JAN 87
DSSN: 6341

20. ORDER AUTHORIZING OFFICIAL (*Title and signature*) OR AUTHENTICATION

HQ III CORPS AND FORT HOOD, FORT HOOD, TX 76544-5056

FOR THE COMMANDER

A A. REMLING II, COL AG Adjacent-General

for /s/ Caral Y. Slaughter

21. DATE ISSUED

9 January 1987

22. TRAVEL ORDER NUMBER

1-62

[Back Side Of Order]

DIRECTORATE OF RESERVE COMPONENTS SUPPORT, III CORPS AND FORT HOOD

TRAVEL ORDER NUMBER 1-62 DATED 9 January 1987

EDGEWORTH, HOWARD B. 467-40-7930	GS-11 CHIEF, EVAL HQ DRCS
BARIL, WILLIAM C. 390-44-7118	GS-09 ADMIN OFCR, DRCS EVAL HQ
MANN, JAMES P. 444-40-4513	MAJ CHIEF, UNIT TRNG BRANCH

DATE: June 21, 1990

SUBJECT: Planning for Training Year 89

TO WHOM IT MAY CONCERN:

1. From February 1987 through January 1989, I was the European planner in J5 War Plans Division, FORSCOM. As such, I was responsible for sourcing Active Component (AC) and Reserve Component (RC) CS/CSS units on supported CINCs' Operation Plan (OPLAN) Time-phased Force Deployment Data (TPFDDs) and CAPSTONE aligning them to meet HQDA and FORSCOM guidance. The results of sourcing and CAPSTONE alignments thus became the focus for training priorities and development of training plans.

2. During the period January - July 1987, FORSCOM was in the process of transitioning from the FY 86 Joint Strategic Capabilities Plan (JSCP) and FY 86 Army Mobilization Operations Planning System (AMOPS) to the FY 88 JSCP and FY 88 AMOPS. The FY 88 JSCP advanced the Joint Staff "Deterrent-Warfight" concept which required the realignment of major combat units and their priorities for employment as well as the realignment of below-the-line AC and RC units.

3. During the period March-June 1987 the CAPSTONE 88 alignments were not yet available to the field (including each CONUSA and CONUS Corps). CAPSTONE 98 alignments based upon the Base Case plans became available to the field on 1 October 1987 and CAPSTONE alignments based upon Regional Plans became available to the field after 1 January 1988.

4. Any training plans based upon CAPSTONE 88 alignments could not be commenced until their release to the field which did not occur earlier than 1 October 1987.

5. Since training plans for Annual Training 89 would be based upon CAPSTONE 88 alignments, it was not possible to commence this planning in the March-June 87 period since CAPSTONE 88 alignments had not been released to the field at that time. Further, [it] is Army policy that training priorities and plans must be based on the joint planning requirements in effect at the time. For annual training 89 plans, this [means] that they had to be based upon CAPSTONE 88 alignments.

/s/ Carlton R. Newman
CARLTON R. NEWMAN
LTC, USA (Retired)

APPENDIX S

SECOND APPEAL MEMORANDUM OF LTC STONEBURNER TO OSRB

This Appendix has ten pages (S-1 through S-10)

MEMORANDUM FOR COMMANDER, ARPERCEN, ATTN: DARP-PRE-A, 9700 Page Blvd., St. Louis, MO 63132-5200

16 JUN 1988

SUBJECT: Second Appeal of OER of LTC William D. Stoneburner, 563-46-1507

1. Request that the OER of LTC William D. Stoneburner, 563-46-1507, for the period 860601 through 870531 (Exhibit 1) be appealed as to:

a. Items "a" and "b" of Part VII, DA Form 67-8, and that these entries be blanked out entirely as if no senior rater portion had ever been completed and included as part of the OER.

b. Items "d" and "e" of Part V, DA Form 67-8, be blanked out since these entries contradict one another and create ambiguity for any board reviewing this OER. The former states "promote with contemporaries" while the latter states continue as a LTC in the IRR beyond my mandatory removal date.

c. Or, in the alternative, that the entire report be thrown out and the period be non-rated since the OER was never referred to the rated officer as an adverse OER as required by Para 4-27i, AR 623-105.

(1) The TAPCOM case summary (Exhibit 2) for the first appeal stated COL Richardson was aware of his Senior Rater profile and that he consciously rated LTC Stoneburner two blocks below his center of mass. At the time of the rendering of this OER no other LTC had ever been rated this low by COL Richardson.

(2) It is submitted that this rating in Part VII could not but be adverse to the career of the rated officer, especially, in light of his pending consideration for promotion to COL. It is well-known that this board selects on a best-qualified basis in contrast to USAR 05-and-below boards which use a fully-qualified criteria.

d. Although the contention that the report is illegal is not repeated in this appeal, the first appeal memorandum is attached as Exhibit 3 and is incorporated by reference as if set forth in full in this second appeal.

2. Before discussing the evidence supporting this appeal four points need to be emphasized:

a. The rated officer never received verbal or written notification of a change of senior rater from COL Woodward to COL Richardson from the time of the arrival of the latter on 2 Mar 87 until the rated officer departed Fort Hood on PCS orders on 29 May 87.

b. The circumstances in which the data in Part I was apparently authenticated by the rated officer's signature in Part II on 2 Jun 87 needs clarification. LTC Stoneburner reported for duty at Fort McPherson, Georgia on 1 Jun 87. The next day the rated officer received a phonecall from Mrs. Nina Anderson, a secretary in the DRCS at III Corps. Mrs. Anderson, at the direction of LTC English, asked the rated officer to sign and date five blank copies of DA Form 67-8 and mail them to her at Fort Hood. LTC Stoneburner complied with this request and mailed five signed and dated blank copies of the OER on 2 Jun 87 to Fort Hood. This was a routine DRCS procedure for any

USAR officer who departed Fort Hood prior to the completion of an OER, especially, when LTC English was the rater.

c. In anticipation of either a closeout report, effective 28 Jan 1987, or a Senior Rater Option effective upon COL Woodward's PCS, a DA Form 67-8-1 was prepared in Jan 87 with LTC English as the rater and COL Woodward as the senior rater. This support form was personally given to LTC English at the time it was prepared and signed by LTC Stoneburner. LTC English never advised the rated officer he would be senior rated by anyone other than COL Woodward nor did LTC English permit the rated officer to update his support form. No DA Form 67-8-1 was ever prepared with COL Richardson identified as the senior rater. It came as a complete surprise that COL Richardson was the senior rater on the report. LTC Stoneburner thought he was to be senior rated by COL Woodward. LTC Stoneburner had been "farewelled" along with COL Woodward on 9 Mar 87. The delay in receiving the report did not seem unusual due to the persistent medical problems of LTC English and his wife which frequently necessitated LTC English's absence from the office. Moreover, it was usually the rule rather than the exception that LTC English was greatly behind in the completion of OER's where the rated officer had departed Fort Hood.

d. The action officer who reviewed the first appeal at TAPCOM and prepared the Case Summary did not accurately or fairly conduct that appeal is the investigative stage, preparation of the Case Summary, or the board's determination of the merits of the first appeal.

3. The last contention (preparation of the Case Summary) is discussed first since the facts and evidence to be presented on this portion of the appeal will impact upon the other points of appeal herein for altering or withdrawing the evaluation report being appealed.

a. The Case Summary states that the basis of the appeal consists solely of the contention that the TAPCOM interpretation of AR 623-105 violates the due process and equal protection clauses of the Constitution.

b. In fact, the appeal is also based upon the contention that it is an injustice and violates the concept of fairness built into the OER process since the senior rater did not have an adequate opportunity to evaluate the long-term potential of the rated officer and that the rated officer believed COL Woodward directed a Senior Rater Option or [closeout] report effective 28 January 1987.

c. The officer conducting the appeal investigation contacted only the senior rater and not the rated officer. He failed to question the general statement of the senior rater that "he rated the appellant based on some observations and review of his work". He failed to query the senior rater to list or cite one or two examples of such observations or the specific work he reviewed. He apparently accepted this statement of generalities and failed to ascertain precisely what work the senior rater based his rating on.

d. While the senior rater was contacted by phone no attempt was made to contact the appellant to discuss the statement of the senior rater. If the appellant had been contacted the general statement by the senior rater would have been contested and denied by LTC Stoneburner that

he was tasked to perform any formal work in the office. Further, he would have learned that no support form was prepared for COL Richardson.

e. The statement of LTC Coachys was not accurately portrayed. The summary omits the fact that LTC English assigned LTC Stoneburner's work area as the permanent work area of LTC Coachys "since LTC Stoneburner would not be spending much time in the office but would be taking leave, permissive TDY in Atlanta and TDY for additional schooling for his next assignment". If the case summary officer had contacted the appellant he would have been told that not only was he assigned no formal tasks but that he no longer had any permanent assigned work area upon his return from TDY in Mar 87.

f. Although the report is phrased to appear as a favorable evaluation of LTC Stoneburner, its overall effect is to have an adverse impact on the rated officer's career. The case summary states that the senior rater noted that the SR portion of the OER dealt with potential and judged the appellant as belonging in the middle of the SR Potential Evaluation. Further, the senior rater knew that the block checked placed appellant at the low end of his personal SR profile and felt that appropriate. As well, he maintained an unofficial record of where he rates officers and is aware of his profile. This SR placement coupled with the narrative comments in Part VII stating that appellant should continue to serve on a higher headquarters staff where he can make a significant contribution at the Lieutenant Colonel level cannot but leave the impression on any board that appellant has no potential for

further promotion and has reached the apex of his potential to the Army as a Lieutenant Colonel and should be retired at that grade.

g. The net effect of this evaluation can only have a derogatory and adverse impact on the career of LTC Stoneburner for both retention and promotion. Consequently, it should have been referred to LTC Stoneburner for comment and acknowledgement before being forwarded to ARPERCEN. Moreover, this would have provided LTC Stoneburner the opportunity to request a Commander's Inquiry before the OER left Fort Hood.

4. The balance of this memorandum deals with the issues as to the injustice of this report due to the absence of adequate observation by the senior rater.

5. From the time of my return from 35 days of TDY on 9 Mar 87, the total time I was in the office only amounted to 16 days (9-13, 16-20 and 23-24 Mar; 24 Apr; and 6-8 May). From 24 Apr 87 on I had commenced efforts to clear Fort Hood and was out of the office for significant portions of those days outprocessing. Consequently, the fairness of the senior rater portion in these circumstances was questioned by LTG Saint in the summary statement of his Commander's Inquiry (See Exhibit 4).

6. Between the period 2 Mar 87 through 28 May 87 COL Richardson never held either an initial or exit interview with me concerning my job and what he expected from me in the way of performance. The longest conversation we had was of a social nature at the coffee table lasting only about one minute. I only saw COL Richardson three or four times to even say hello or good morning. COL

Richardson never tasked me to accomplish any staff or office function during this period.

7. LTC English, my rater, consistently ignored me through either inadvertent neglect or design and failed to task me during the 16 days in this period with any staff actions, decision papers, or commandgrams which would require any formal written papers or memoranda for completion, review, or signature by either he or COL Richardson. Thus, there was no opportunity for COL Richardson to become familiar with my thinking or logical development of a staff action or the conclusions/recommendations reached in such actions. (See Exhibit 5)

8. My mission during this period was to interface with my replacement, MAJ Mann and assist him in the assumption of my planning responsibilities in the Directorate of Reserve Component Support. This was accomplished in a timely manner. I remained available at all times while I was in the office to further assist MAJ Mann and provide an institutional memory for any question he might raise. All requirements and tasks given to me were completed in a timely manner during this period. (See Exhibit 6)

9. Although I remained available to assist MAJ Mann through the period of 9 Mar 87 to 28 May 87, he required no assistance subsequent to 28 Jan 87 when I left for 35 days of TDY schooling. On 29 Jan 87 he assumed all of my responsibilities as the Operations and Training Officer in the DRCS. We had worked closely together from 12 Jan 87 through 28 Jan 87. By that latter date MAJ Mann had a firm grasp of all the planning, scheduling, and coordinating responsibilities of Reserve Component training.

10. After my return to Fort Hood in Mar 87, I frequently checked with MAJ Mann to see if I could assist him. Each time he replied that he had everything under control and needed no assistance.

11. It may have been COL Richardson's perception that LTC Stoneburner helped plan, schedule, and coordinate the 1988 training for the Reserve Components when in fact LTC Stoneburner took no part in such activity from his return to Fort Hood on 9 Mar 87 until his departure on 29 May 87. This work was accomplished in its entirety by Howard Edgeworth (GS-11), William Baril (GS-9), and MAJ Mann. These three individuals still work at the III Corps DRCS.

12. Moreover, I was never involved in any RC unit mobilization and training readiness taskings or programs during this period, prior to my PCS, when COL Richardson was Director of the DRCS. COL Richardson may have perceived LTC Stoneburner was making significant contributions to the mobilization and training readiness of Reserve Component units during this period. However, if any taskings were given to the DRCS during this time involving RC unit mobilization and training readiness, LTC Stoneburner was not involved in them in any fashion.

13. Although I requested that LTC English give me work to do during the time I was in the office in Mar 87, he gave me no taskings to accomplish during that time. During the few days I was in the DRCS in May 87 he tasked me to add two additional addresses to the address information group the DRCS used for Annual Training messages and to prepare, in SRC format, a list of the RC

units CAPSTONE to III Corps per the 86 CAPSTONE (which was useless for 89 Annual Training plans since it was to be superseded by the 88 CAPSTONE downraces, effective 1 Oct 87). I completed both of these taskings and had them ready for final typing. Finally, on the last normal work day I was in the office (Friday, 8 May 87), I was tasked to assist in the preparation of the DRCS input to the III Corps Historical Report. MAJ Mann was to complete the Historical Report. I came in the following morning (Saturday, 9 May 87) and assisted MAJ Mann in the preparation of this report. I told him where to obtain the RC training data that was derived from sources outside of our office. From that morning on, I never returned to the DRCS. Never again was I tasked or involved in any work with the DRCS at Fort Hood.

14. Whatever COL Richardson based his comments on in Part VII of this OER it was not based on any observation of LTC Stoneburner's work in these areas since he was not involved in any taskings to plan, schedule or coordinate 1988 annual training nor was he involved in any taskings concerning RC unit mobilization and training readiness during the time COL Richardson was the Director of the III Corps DRCS.

15. One final point is appropriate. The report inaccurately depicts my performance during the entire rated period as illustrated by the fact that I was awarded the Meritorious Service Medal for the period 17 July 1983 to 1 March 1987 (Exhibit 7). The inclusive dates of this award coincide with a substantial portion of the rated period. This award is further evidence to substantiate my impression that I would receive a closeout report, effective 28

Jan 87, or a senior rater option effective upon COL Woodward's PCS. The award was for *service* not achievement. An award for service is not normally awarded until the closeout of a period of assignment. Also, at that time, I was on orders to Headquarters Eighth US Army with a reporting date of 4 May 87 (Exhibit 8) and only later was I assigned to FORSCOM.

16. The chronological sequence of events is set forth in Exhibit 9.

17. Request that this appeal be approved for all the reasons stated above and that this relief be granted:

a. Items "a" and "b" of Part V, AR 67-8, be blanked out entirely as if the senior rater portion had never been completed as part of the OER.

b. Items "d" and "e" of Part V, AR 67-8, be blanked out since these entries contradict one another and create ambiguity for any board reviewing this OER.

c. Or, in the alternative, that the entire report be thrown out and the period be nonrated since the OER was never referred to the rated officer as an adverse OER.

/s/ William D. Stoneburner
WILLIAM D. STONEBURNER
LTC QM
563-46-1507

APPENDIX T

DEPARTMENT OF THE ARMY COVER LETTER FOR THE RETIREMENT OF LTC STONEBURNER, DATED 18 JUN 1990, LETTER FROM COMMANDING GENERAL, ARPERCEN, ST. LOUIS, MO, DATED 18 JUN 1990, CERTIFICATE OF APPRECIATION FROM CHIEF, ARMY RESERVE, DATED 27 JUNE 1990, AND RETIRED RESERVE TRANSFER CERTIFICATE, DATED 27 JUNE 1990

This Appendix has four pages (T-1 through T-4)

[SEAL]

DEPARTMENT OF THE ARMY
U.S. ARMY RESERVE PERSONNEL CENTER
9700 PAGE BOULEVARD
ST. LOUIS, MO 63132-5200

REPLY TO
ATTENTION OF

DARP-PAT-R (140) Stoneburner, William D. JUN 18 1990
SSN 563-46-1507

MEMORANDUM FOR

Commander
Second US Army
ATTN: AFKD-PRR-O
Ft. Gillem, GA 30050-7000

SUBJECT: Retirement/Farewell Ceremony

1. Enclosed are documents pertaining to transfer to the Retired Reserve for the above named individual.

2. Request documents be presented in an appropriate ceremony consistent with the desires of the recipient.

FOR THE COMMANDER:

/s/ Sylvia L. Anderson
for EARL T. GARRETT
LTC, GS
Chief, Soldier Support Division

5 Encls

1. Ltr of apprec

2. Orders

3-5. Certificates

CF:
LTC William D. Stoneburner
9466 Cypress Lane
Jonesboro, GA 30236-5784

"MANAGEMENT FOR MOBILIZATION"

[SEAL]

DEPARTMENT OF THE ARMY
U.S. ARMY RESERVE PERSONNEL CENTER
9700 PAGE BOULEVARD
ST. LOUIS MO 63132-5200

REPLY TO
ATTENTION OF

Removal Branch JUN 18 1990

Lieutenant Colonel William D. Stoneburner
9466 Cypress Lane
Jonesboro, Georgia 30236-5784

Dear Colonel Stoneburner:

On the occasion of your retirement from the United States Army Reserve, you take with you the sincere appreciation of a grateful Nation for the dedicated and honorable military service you have provided in our Country's national defense.

On behalf of the United States Army, I extend a personal thanks for your many years of professional duty to our Country. I share your pride in the contributions you have made to the Army, and trust that you will maintain an active interest in the Army and its objectives during your retirement.

Your records will be maintained by the U. S. Army Reserve Personnel Center. Should problems or questions

arise, please correspond with the aforementioned Center, Attention: DARP-PAR, 9700 Page Boulevard, St. Louis, Missouri 63132-5200 or call, toll free, 1-800-325-8311.

Best wishes for happiness and success in the years ahead.

Sincerely,

/s/ Thomas J. Kilmartin
Thomas J. Kilmartin
Brigadier General, USA
Commanding

"MANAGEMENT FOR MOBILIZATION"

DEPARTMENT OF THE ARMY

(LOGO)

CHIEF ARMY RESERVE

CERTIFICATE OF APPRECIATION

TO

LIEUTENANT COLONEL WILLIAM D. STONEBURNER
QUARTERMASTER CORPS USAR

On the occasion of the completion of your active Reserve service, I wish to extend to you my personal thanks and the sincere appreciation of the United States Army for your devotion to duty and the many years of outstanding service which you have given to our country.

27 June 1990

/s/ William F. Ward
MAJOR GENERAL,
UNITED STATES ARMY
CHIEF ARMY RESERVE

(SEAL)

T-4

United States Army

(LOGO)

Retired Reserve

This is to certify that,
by authority of the Secretary of the Army,

WILLIAM D. STONEBURNER 563-46-1507
LIEUTENANT COLONEL
QUARTERMASTER CORPS USAR

has been transferred to the Retired Reserve in recognition of honorable service and continued interest in the defense of our Nation, on the TWENTY-SEVENTH *day of* JUNE 1990

ST. LOUIS, MISSOURI

/s/ Thomas J. Kilmartin
THOMAS J. KILMARTIN,
Brigadier General,
U.S. Army Commanding
U.S. Army Reserve Personnel Center